

thrall. I make no new charge when I say that the great financial, industrial, railroad, and commercial interests own the political organizations in Pittsburgh and Philadelphia, and these machines dominate the lives of the people, control or corrupt elections, and, in short, make a mockery of the representative system of government. There are, for instance, wards in Philadelphia which, year after year, make the same election returns and put an adding machine to shame. Voters may die or depart, according to testimony before a Senate committee by a Philadelphia election official, but their names remain on the rolls to the gain and glory of the Vane machine.

When Senator GEORGE W. NORRIS, of Nebraska, toured the State on behalf of William B. Wilson, the Democratic candidate for the Senate, he met many Pennsylvanians who protested against these conditions—bankers, business men, professional men, editors, teachers, and employers in the smaller communities. But when he urged them to take part in the campaign, even if it were only to preside at his meetings, their enthusiasm vanished. It was not that they were not sincere. They were. But they dared not let their true feelings become known lest it provoke reprisal against them by "the organization" and its local lieutenants. Thus it is clear to me that the average Pennsylvanian, despite his constitutional right to the ballot, has as much voice in the naming of his officials and framing of policies as did a vassal of the Dark Ages.

I am convinced that if the people of Pennsylvania were to be given a clear-cut choice between worth-while candidates for public office and the sort offered by the political bosses, they would seize the opportunity to dethrone those now in power. Then, and only then, will Pennsylvania emerge from a state of backwardness which, in my estimate, is equalled by no other Commonwealth.

Then, and not until then, will its spokesmen at Washington be justified in seeking greater influence in national councils. Then, and only then, will Mr. GRUNDY and his associates—or their successors—be entitled to speak of "backward States" in lofty tones or to advise us to "talk darn small."

WASHINGTON POST EDITORIALS

Mr. FESS. Mr. President, this morning there appeared in the Washington Post two leading editorials, one entitled "Southern Federal Jobs," and the other "Obscenity Barred," which I think ought to have a wider reading. I therefore ask unanimous consent that they be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

SOUTHERN FEDERAL JOBS

President Hoover's methods of handling patronage in the South apparently has the approval of everyone, except the partisan members of the Senate committee which investigated conditions. A year ago Mr. Hoover announced his intention of uprooting the disreputable elements of the Republican organization in the South, and there is every reason to believe that he has succeeded. By bringing in a report that is a year behind the times the committee contributes nothing toward improvement of conditions. Its report appears to be an unwarranted attempt to embarrass the administration.

Incidents to which the committee refers were corrected by the broad general policy adopted by President Hoover soon after he entered the White House. "Under instructions to the various departments," he says, "a system has been established by which those reprehensible practices have been absolutely stopped and the system of purchase and sale of appointments, so far as it existed, has been ended. All Federal officials known to have engaged in such practices have either resigned or been removed." A controversy between the old and new patronage organizations of South Carolina has resulted in indiscriminate charges of corruption. These are being investigated by the Department of Justice, and President Hoover can be depended upon to take any action necessary to prevent traffic in Federal offices.

The committee deviated from its general purpose to make charges against two Federal officials who are in no way connected with distribution of patronage. But these are also under scrutiny of the Department of Justice. The committee's inferences that the administration is winking at the commercialization of southern patronage are wholly unjustified.

President Hoover is anxious to build up a strong and respectable Republican organization in the South. The best interests of the party as well as those of the Southern States and the country as a whole demand that he be given support in this project. The situation can not be improved by dragging out old charges and irrelevant issues calculated to discredit the efforts of the party to set its own house in order.

OBSCENITY BARRED

The Senate, without a roll call, has restored to the tariff bill a provision excluding obscene and seditious foreign books. Senator CUTTING, champion of free and unlimited importation of foreign books, was left high and dry in the debate. His plea that classical and meritorious

modern literature might be kept from America by a brutal Government censorship was shown to be fallacious. The effect of his amendment, accepted by the Senate in Committee of the Whole, would have been to open the doors of America to unspeakably vile foreign books.

It is easy to argue that the Bible, Shakespeare, and many ancient books contain matter that can be classed as "obscene," and that, therefore, a censorship against obscenity would rob the American people of the opportunity to import such works. But the argument is flimsy and sophomoric. Unadulterated and deliberately base works are written and printed abroad to be sold surreptitiously in the United States, and Congress would be merely an agent for the dissemination of immorality and sedition if it did not debar such works.

The courts, and not customs inspectors, are made final judges of the character of books seized by the Customs Service because of their apparent obscenity. This is a change for the better. That Congress would have eliminated censorship altogether was inconceivable.

RECESS

Mr. SMOOT. I move that the Senate take a recess, the recess to be until 11 o'clock to-morrow.

The motion was agreed to; and the Senate (at 9 o'clock and 55 minutes p. m.), under the order previously entered, took a recess until to-morrow, Friday, March 21, 1930, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES

THURSDAY, March 20, 1930

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O Thou who dwellest in eternal light, give us power of will to forsake the dark things of mind, the masters of evil appetite, and the spirit of hate. Create in us that type of manhood that is religious, spiritualized, strong, and well balanced. O endow us with that personal force that shall give dignity to our station, steadiness and safety to the Republic. Clothe us with that inner strength that shall direct us to do our best, and breed in us that self-control and diligence and those other virtues which the idle and the negligent never cultivate. When the path of duty is a long road, the hill steep, and the valley forbidden, O remember us in the name of everlasting love. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate further insists upon its amendments Nos. 23, 46, and 47 to the bill (H. R. 9979) entitled "An act making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1930, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal years ending June 30, 1930, and June 30, 1931, and for other purposes," disagreed to by the House; asks a further conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. JONES, Mr. HALE, Mr. PHIPPS, Mr. OVERMAN, and Mr. GLASS to be the conferees on the part of the Senate.

CONFERENCE REPORT—FIRST DEFICIENCY BILL

Mr. WOOD. Mr. Speaker, I move to take from the Speaker's table the bill (H. R. 9979) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1930, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal years ending June 30, 1930, and June 30, 1931, and for other purposes, adhere to the disagreement of the House to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. The Clerk will report the bill.

The Clerk read the title of the bill.

Mr. GARNER. Mr. Speaker, may I ask the gentleman if his motion is agreeable to Mr. BYRNS and Mr. BUCHANAN, the Democratic conferees?

Mr. WOOD. Yes. I will say that I talked to them about it yesterday.

The SPEAKER. The question is on the motion of the gentleman from Indiana.

The motion was agreed to.

The Chair appointed the following conferees: Messrs. Wood, CRAMTON, WASON, BYRNS, and BUCHANAN.

PERMISSION TO ADDRESS THE HOUSE

Mr. HOWARD. Mr. Speaker, I ask unanimous consent to address the House for four minutes.

The SPEAKER. The gentleman from Nebraska [Mr. HOWARD] asks unanimous consent to proceed for four minutes. Is there objection?

Mr. SNELL. Mr. Speaker, reserving the right to object, and I dislike to object, but several other persons have asked to go on to-day and I have decided we should protect the bus bill and get it passed or disposed of. I therefore object for the present.

EXTENSION OF REMARKS

Mr. HOWARD. Then I ask unanimous consent to extend my remarks by incorporating in the RECORD a petition to this Congress by a class of people who have no other voice than through their Representatives here a petition from the tribal council of my Omaha Indians.

The SPEAKER. The gentleman from Nebraska [Mr. HOWARD] asks unanimous consent to extend his remarks by printing a petition from an Indian tribal council.

Mr. UNDERHILL. Reserving the right to object, the proper place for that petition is to go to the appropriate committee. I must object.

Mr. HOWARD. Mr. Speaker, I yield, of course, to the objection; but I deny the right of the gentleman from Massachusetts [Mr. UNDERHILL] to educate me, he being uninformed.

THE TARIFF BILL

The SPEAKER. Under the order of the House the Chair recognizes the gentleman from Texas [Mr. GARNER] for the first of his two speeches.

Mr. GARNER. Mr. Speaker and Members of the House, I asked for this time to-day in view of the fact that it has become our custom to engage time a week ahead, so that in an ordinary case, needing some explanation to the House of Representatives, there is no opportunity to do as we have done before, to rise and ask unanimous consent to address the House for 10 or 15, or even 30 minutes.

When I asked for this time I had hoped and believed, from conversations with leaders of the Senate, that the tariff bill would be passed last night. I think it was their intention to close it not later than last night, and I wanted an opportunity then to talk to the House and see if I could reason with some of the brethren on the left, the Republicans, as to what they should do with the tariff bill after it came back from the Senate. I am going to take advantage of it this morning to address myself to both sides of the House.

The bill will probably come over from the Senate the latter part of this week, and the question is, what is the House of Representatives going to do with it. Mr. HAWLEY asked me this morning in a very innocent way: "Are you going to object to sending it to conference?"

I told him I certainly was.

Ordinarily, under the rules of the House of Representatives, when a bill comes back from the Senate, the Speaker of the House sends it to the proper committee, which in this case would be the Ways and Means Committee, in order that the committee may consider the amendments. But under the practice, many bills are called up when the Senate puts amendments on them and they are sent to conference by unanimous consent. Sometimes rules are brought in for the purpose of sending bills to conference. I imagine that in this instance a rule will be brought in; that the gentleman from New York [Mr. SNELL] will be called upon to draw a rule in which he will disagree to 1,500 or 2,000 amendments placed on by the Senate, and send the tariff bill to conference.

Mr. SNELL. Will the gentleman yield?

Mr. GARNER. I yield.

Mr. SNELL. The gentleman has had long experience in the House. When did they ever do any differently in handling a tariff bill in the House, either under a Democratic or Republican administration?

Mr. GARNER. I do not know that I am familiar with it.

Mr. SNELL. The gentleman is fairly familiar with it.

Mr. GARNER. I do not care what the precedents are. There never has been one drawn that is just like this one. That much must be said.

Mr. RAMSEYER. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. RAMSEYER. Before the Civil War—

Mr. SNELL. I do not believe the gentleman from Texas [Mr. GARNER] was here before the Civil War.

Mr. RAMSEYER. I supposed the gentleman from Texas [Mr. GARNER] had made a study of this, as I have. Before the Civil War the universal practice, or, rather, the quite general practice, on both tax and tariff bills and also on appropriation bills, was to consider the amendments of the other body in the Committee of the Whole before sending it to conference.

Mr. GARNER. I am a little surprised at my friend from Iowa, for I understand he served on the Committee on Rules. Is that correct?

Mr. RAMSEYER. Yes. I served there for nearly four years.

Mr. GARNER. I am surprised to think you could be asking the gentleman from New York [Mr. SNELL] if he wanted information. He does not want any information.

Mr. RAMSEYER. The gentleman from Texas [Mr. GARNER] wanted information, or pleaded ignorance on the matter, and I am trying to supply him with information.

Mr. GARNER. What the gentleman from New York [Mr. SNELL] wants to know is what the bosses want him to do. He generally finds out at an early date, being one of them, and that is all the information the gentleman wants.

But I thought I might talk to some of those on the Republican side of the House and see if we could not arrive at a conclusion to give some thought and deliberation to the tariff bill. I am looking into the faces of men and women who have not had one thing to do with the passage of this legislation. You did not have anything to do with it. The gentleman from Washington [Mr. JOHNSON] smiles. The gentleman did not have anything to do with it.

Mr. JOHNSON of Washington. I was wondering if the gentleman was not looking at the gentleman from Oregon [Mr. HAWLEY].

Mr. GARNER. The gentleman, however, usually follows the gentleman from Oregon [Mr. HAWLEY].

Mr. JOHNSON of Washington. Gladly.

Mr. GARNER. That still confirms what I say.

The gentleman did not have anything to do with it when the bill passed the House. All the gentleman did was to follow.

Mr. JOHNSON of Washington. Not quite.

Mr. GARNER. That is all you did. Now, this House has never given consideration to this tariff legislation. Do you want to consider it in any way?

Mr. JOHNSON of Washington. Will the gentleman yield?

Mr. GARNER. Not until I finish. I am not going to get into any controversy with the gentleman as to whether he is a leader or a follower.

Mr. JOHNSON of Washington. I wonder if the gentleman will not let me wait until the other body reaches a decision as to the lumber and shingle tariffs.

Mr. GARNER. I know the gentleman is a leader on lumber and a follower on everything else, if you will give him a little duty on lumber.

Do you people on this side of the Chamber desire to give any consideration to the various schedules in the tariff bill? Remember you will have no opportunity except in the House of Representatives. When it comes back from the Senate, if you vote to send it to conference, your opportunity is gone, because then you commit this piece of legislation to the three Republican ranking members on the Ways and Means Committee, who with 12 other Republicans made it up in the House, and these three Republicans will be your representatives and your spokesmen, and you will have no opportunity to consider for a moment any amendment or any schedule placed in the tariff bill by the Senate of the United States.

Mr. BACHARACH. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. BACHARACH. If we did take it up in the Committee of the Whole, I wonder how long the gentleman from Texas thinks it would take us to consider all of those 1,500 amendments.

Mr. GARNER. I will tell the gentleman, who seems to be short on information, something. Here is what I would do if I had my way: I would not take it through all the vicissitudes of considering each amendment under the rules of the House of Representatives, although that is the most desirable way to do it; I realize that time is one of the essential elements in the consideration of this piece of legislation just now. When it comes back on the floor of the House of Representatives I would consider it by schedules. I would give 10 minutes on a side for debate on each schedule, and if you did that you would consider it intelligently and pass the bill within two days. Are you willing to do it?

Mr. BACHARACH. With only 10 minutes of debate on every schedule?

Mr. GARNER. I would be willing to take more time if you would give it to me, but I am trying to comply with your rules. However, that procedure would give me a chance, and all of us a chance, to vote on the amendments to the tariff bill and the rates put in by the Senate under each schedule.

Now, what are those amendments and what are those rates? I am going to give them to you briefly. I have in my hand, and I will insert in the RECORD, a letter from the chairman of the

Tariff Commission, sent to me at 10 o'clock this morning, giving me the latest figures of the Tariff Commission on these various schedules. Mr. Speaker, I ask unanimous consent to put these in the RECORD, in addition to some comparisons I have made myself.

The SPEAKER. Without objection, it is so ordered.
There was no objection.

UNITED STATES TARIFF COMMISSION,
Washington, March 19, 1930.

Hon. JOHN N. GARNER,

House of Representatives, Washington, D. C.

My DEAR MR. GARNER: I am returning herewith your copy of Senate Document No. 30, Comparison of Rates of Duty in the Pending Tariff

Bill of 1929 with the Tariff Act of 1913 and the Tariff Act of 1922. At a request received this morning from the minority clerk of the Committee on Ways and Means, Mr. Walter L. Price, we have inserted on page 3 a revised summary of the data for each of the tariff schedules. This revised copy contains, in addition to the information shown in the printed copy for the Senate Committee of the Whole and the Senate, the computed duties on the basis of 1928 imports and the actual or equivalent ad valorem rates. The data for the Senate incorporate all changes made by the Senate up to and including March 13, 1930.

These figures are preliminary, although they are considered to be fairly accurate.

Very truly yours,

E. B. BROSSARD, Chairman.

Summary by schedules of rates of duty in the tariff act of 1913, the tariff act of 1922, and bill H. R. 2667 as passed by the House of Representatives and as reported to the Senate by the Finance Committee with subsequent changes by the Senate Committee of the Whole, and as further agreed to by the Senate up to and including March 13, 1930—Schedules 1 to 15

Schedule	Article	Value of imports, calendar year 1928	Computed duties on 1928 imports						Actual or computed ad valorem rates					
			H. R. 2667						H. R. 2667					
			Act of 1913	Act of 1922	As passed the House of Representatives	As reported by Senate Finance Committee	As agreed to by Senate Committee of the Whole	As agreed to by the Senate up to Mar. 13, 1930	Act of 1913	Act of 1922	As passed the House of Representatives	As reported by Senate Finance Committee	As agreed to by Senate Committee of the Whole	As agreed to by the Senate up to Mar. 13, 1930
1	Chemicals, oils, and paints.....	\$94,909,666	\$15,402,669	\$27,688,949	\$30,466,224	\$28,119,435	\$29,022,092	\$28,970,353	P. d.	P. d.	P. d.	P. d.	P. d.	P. d.
2	Earths, earthenware, and glassware.....	56,521,947	18,000,225	25,567,147	30,776,372	29,924,652	27,297,175	29,654,814	16.23	29.17	32.10	29.63	30.58	30.52
3	Metals and manufactures of.....	118,658,110	16,987,338	40,004,372	43,118,528	34,941,479	38,407,195	38,754,924	31.85	45.23	54.45	52.94	48.29	52.47
4	Wood and manufactures of.....	26,453,184	1,771,196	4,191,356	6,702,169	4,141,108	4,118,606	4,139,242	14.32	33.71	36.34	29.45	32.37	32.66
5	Sugar, molasses, and manufactures of.....	174,759,643	68,550,633	118,872,109	161,405,190	148,100,786	119,212,001	134,843,827	6.70	15.85	25.34	15.66	15.57	15.65
6	Tobacco and manufactures of.....	62,318,624	37,804,801	39,314,791	41,729,431	39,314,791	39,314,791	39,314,791	39.23	67.85	92.36	84.75	68.21	77.16
7	Agricultural products and provisions.....	266,792,553	26,249,569	59,686,019	88,981,576	86,429,586	95,597,728	95,804,790	60.66	63.09	66.96	63.09	63.09	63.09
8	Spirits, wines, and other beverages.....	1,433,616	366,198	523,045	680,069	680,069	680,069	680,069	9.84	22.37	33.35	32.40	35.83	35.91
9	Manufactures of cotton.....	49,463,049	15,097,002	19,916,340	21,557,444	21,557,036	18,870,585	18,870,585	25.54	36.48	47.44	47.44	47.44	47.44
10	Flax, hemp, jute, and manufactures of.....	133,207,491	13,403,944	24,191,702	25,284,930	25,724,740	26,167,622	25,433,528	30.52	40.26	43.58	33.58	38.15	38.15
11	Wool and manufactures of.....	115,180,986	23,923,150	57,171,665	66,886,360	65,468,100	65,752,262	65,752,262	10.22	18.44	19.27	19.31	19.64	18.97
12	Manufactures of silk.....	32,440,182	15,038,217	18,348,161	19,518,180	20,256,955	18,825,189	18,825,189	49.64	58.07	58.07	56.84	57.09	57.09
13	Manufactures of rayon.....	11,425,596	3,928,913	6,019,359	6,065,431	6,157,202	6,145,719	6,133,708	46.36	56.56	60.17	62.44	58.03	58.03
14	Paper and books.....	20,345,158	4,408,264	4,986,391	5,317,439	5,315,286	5,214,023	5,271,588	34.39	52.68	53.09	53.89	53.79	53.68
15	Sundries.....	316,695,350	51,441,872	66,455,927	90,440,519	83,976,993	66,121,799	66,121,799	5,271,588	21.67	24.51	26.14	25.63	25.91
	Total, comparable items.....	1,480,605,155	312,373,991	512,637,333	638,929,862	600,108,218	560,746,856	578,571,469	16.24	20.98	28.56	26.52	20.88	20.88
									21.10	34.62	43.15	40.53	37.87	39.08

Summary by schedules of actual or computed ad valorem rates of duty in the tariff bill, H. R. 2667, as passed by the House of Representatives and as agreed to by the Senate up to and including March 13, 1930

Title	Per cent		Senate changes, per cent		Relation of Senate changes to House bill, per cent	
	House	Senate	Increase	Decrease	Increase	Decrease
1. Chemicals, oils, and paints.....	32.10	30.52	-----	1.58	-----	4.9
2. Earths, earthenware, and glassware.....	54.45	52.47	-----	1.98	-----	3.6
3. Metals and manufactures of.....	36.34	32.66	-----	3.68	-----	10.0
4. Wood and manufactures of.....	25.34	15.65	-----	9.69	-----	38.0
5. Sugar, molasses, and manufactures of.....	92.36	77.16	-----	15.20	-----	16.4
6. Tobacco and manufactures of.....	66.96	63.09	-----	3.87	-----	5.7
7. Agricultural products and provisions.....	33.35	35.91	2.56	-----	7.6	-----
8. Spirits, wines, and other beverages.....	47.44	47.44	Same.	Same.	-----	-----
9. Manufactures of cotton.....	43.58	38.15	-----	5.43	-----	12.4
10. Flax, hemp, jute, and manufactures of.....	19.27	18.97	-----	.30	-----	1.5
11. Wool and manufactures of.....	58.07	57.09	-----	.98	-----	1.6
12. Manufactures of silk.....	60.17	58.03	-----	2.14	-----	3.5
13. Manufactures of rayon.....	53.09	53.68	.59	-----	1.1	-----
14. Paper and books.....	26.14	25.91	-----	.23	-----	.87
15. Sundries.....	28.56	20.88	-----	7.68	-----	26.8

Mr. GARNER. This is what the Tariff Commission reports. I do not know whether you have examined these comparisons, but the Senate got out this document up to a certain period; that is, when the bill was reported from the Finance Committee. Now, the Tariff Commission has brought these comparisons, as nearly as they can, up to date, including every amendment, when it was considered in the Committee of the Whole and when it

got out of the Committee of the Whole, up to March 13. There has been very little change since March 13.

Now, what are those comparisons, and what is the duty of a Democrat? I do not care what a Democrat's views are, even if his views are similar to those of my friend from Alabama [Mr. HUDDLESTON], and I believe I am violating no secret, because I believe he said on the floor of the House he was for free trade.

Mr. HUDDLESTON. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. HUDDLESTON. But for all kinds of protection on products of my district, just like everybody else. [Laughter.]

Mr. GARNER. I had hoped the gentleman from Alabama would reform, and I find he has. [Applause.] I am very happy to know it.

Mr. HUDDLESTON. Will the gentleman yield further?

Mr. GARNER. Yes.

Mr. HUDDLESTON. Theoretically I am for free trade, and if I could get anybody else of reputation to join with me I would stand for it, but what is the use of one honest man standing alone? [Laughter.]

Mr. GARNER. Well, it makes no difference what the opinion of a Democrat may be on the tariff. There is only one type of a Democrat who could send this bill to conference without an opportunity of voting on the Senate amendments and that would be a Democrat who believes that the rates on agricultural products are too high in the Senate bill. I can understand how a Democrat who honestly believes that the rates which were increased in the Senate are made too high in the agricultural schedule could consistently vote against that schedule and therefore vote to send the bill to conference with the hope of getting those rates reduced. But every schedule in this bill, as passed by the House and sent to the Senate, has been decreased except two. I will put these percentages in the RECORD, and those who are interested may glance at them tomorrow, if they desire. The Senate has increased the agricul-

tural rates 2.56 per cent, which is an increase of 7.6 per cent of the House rates.

The schedule relating to the manufactures of rayon has been increased 59 per cent, which is an increase of 1.1 per cent of the House rates, but the other schedules have been decreased.

Mr. CROWTHER. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. CROWTHER. Would the gentleman mind giving the percentage of decrease.

Mr. GARNER. I am going to do so. I can understand, Doctor, how you are perfectly consistent and I would vote like you are going to vote if I were in your place, because you believe the rates put in the House bill are not quite high enough.

Mr. CROWTHER. Not quite.

Mr. GARNER. I thought so, and believing that very naturally, and properly so, you would vote to send the bill to conference for the purpose of endeavoring to get these rates retained in the bill.

Mr. CROWTHER. Will the gentleman yield further?

Mr. GARNER. No; just a minute. Let me carry the thought out a little further. We find the Senate has reduced the rates in every schedule except on agriculture and has left it comparatively where it was on rayon. Now, you can not go below the Senate rates and you can not go above the House rates in conference. Everybody, including the new Members of the House, knows the rules governing conferences. You can not go below or above the two sets of rates. So the rates that are in the Senate bill must be accepted by the House or they have got to be raised in conference. They are the lowest you can possibly get.

What is the duty of a Democrat if he honestly believed that the House rates were higher than they should have been? It is his duty to vote to agree to the Senate rates, reserving the right to himself, if he desires to do so, to vote against the bill even if such rates are adopted. He would then be contributing to holding them down to the lowest level, as I think the Senate rates have done.

I yield now to the gentleman.

Mr. CROWTHER. Let me say to the gentleman from Texas that his party, together with my party, came to a common agreement in the last election as to what tariff rates should be, and they both stated very clearly, if the gentleman will bear with me a moment—

Mr. GARNER. Yes.

Mr. CROWTHER. That the tariff should always represent the difference in the production costs here and abroad. Let me say to the gentleman, after very careful preparation through listening to the hearings and going over the briefs that were submitted, the Hawley bill was submitted to the House and to the country, and let me further say to the gentleman there was not a single rate in the Hawley bill that really represented the difference in production costs here and abroad. [Applause.]

Mr. GARNER. They are a little lower.

Mr. CROWTHER. They were lower than they ought to have been, provided that is the proper basis to be used.

Mr. GARNER. I understand the doctor's position—that the rates were too low.

Mr. CROWTHER. Whether it is right to continue that basis or that method of allocation is a question. Many times we found the difference would be so great that the committee would not accept it, much less the House, and we may have to find some new method of allocation of duties rather than the fundamental basis which we have been adopting for years and that you people took from us last year and declared as your own purpose. The gentleman will remember that a very prominent New Yorker, a candidate on your ticket, declared that he was for tariff revision and that he was for the kind of tariff revision that would not take a single 5-cent piece from the pay envelope of any industrial worker in the United States. [Applause.]

Mr. GARNER. I thank you, Doctor. That is quite a contribution. [Laughter.] The gentleman is doing exactly what he always does.

Mr. CROWTHER. Will the gentleman yield?

Mr. GARNER. Just a minute. Give me a little time.

Mr. CROWTHER. Just give me a moment. If the gentleman wants his speech to be a really good speech, he will yield to me occasionally.

Mr. GARNER. I do. I do not think there is a more ideal Republican protectionist in the United States Congress or elsewhere than you are, sir [laughter and applause], and I think your views are ideal for the Republican organization, although some of your colleagues repudiate them.

Mr. CROWTHER. Just a moment.

Mr. GARNER. I can not give you all the time, however good a speech you may make.

Mr. CROWTHER. Let me say right here to the gentleman from Texas that the gentleman has also made some very earnest protestations in this House and in his State as to being a protectionist, and I want him to live up to them when it comes to final action on this bill and I want him to measure up to those statements.

Mr. GARNER. I intend to. I want you to give me an opportunity, therefore, to consider these schedules in the House so I can demonstrate them. Will you give me an opportunity to demonstrate?

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. GARNER. In just a minute. Will you give me an opportunity, sir, to demonstrate?

Mr. CROWTHER. In answer to that I will say that in the light of what has happened with regard to the gentleman's leaning toward protection and his real actions in the past with respect to it, I do not think I would want to do that, because, when he had an opportunity to demonstrate, he made a miserable failure after making a great speech on a protective measure which was pending here.

Mr. GARNER. Now, how much time do you want? [Laughter.]

Mr. CROWTHER. I will take all the time the gentleman will give me. [Laughter.]

Mr. GARNER. Let me use a little of my time now. Let me occupy the floor for just a little while.

I regret very much that my friend from New York seems to have lost confidence in my protestations about being for sane and adequate protection, but I am.

This is the reason I am making these remarks. There are some of these schedules I would vote for and some that I would vote against, and I want to have an opportunity to vote upon them, and certainly we should have an opportunity to consider them. Is there any reason why we should not take up the chemical schedule, for instance?

Mr. TREADWAY and Mr. BACHARACH rose.

Mr. GARNER. Just a moment. I am going to use a little of my time now. I am not going to give it all to people who do not know anything about the situation and do not seem to want to learn anything about it.

Why can you not give an hour to the consideration of each one of these schedules? For instance, here is the chemical schedule, and practically every rate in it has been reduced. Casein, a product of the dairy, is one rate that has been increased. Why can you not give me an opportunity to vote on the rates in the chemical schedule?

Is there any reason why you gentlemen should not have an opportunity to intelligently cast your votes as to your preference between the House rates and the Senate rates? Are you afraid? You have time enough to do this. There are 15 schedules, and if we took an hour to each schedule, for instance, we could consider the bill in 15 hours, or about three days, which would afford an opportunity for intelligent discussion, intelligent consideration, and give the members of the House an opportunity to cast their votes for either the Senate rates or the House rates. Why do you not do that? Are you afraid?

This would give you an opportunity, my dear lady from New York [Mrs. PRATT], to vote for a reduction in the rate on sugar, for which you so eloquently pleaded on the floor of this House.

I would like an opportunity for this House to go on record, as to whether it favors the exorbitant rates contained in the House bill, or the more moderate and reasonable rates contained in the Senate bill. Is there any reason why you should not give us this opportunity?

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. GARNER. I yield now to the gentleman.

Mr. SCHAFER of Wisconsin. Under the gentleman's plan, would the House have an opportunity to have a separate vote on the antimony, and antimony-oxide rates?

Mr. GARNER. Yes.

Mr. SCHAFER of Wisconsin. We find that the House rejected a proposed increase in this rate, and the only person who appeared—

Mr. GARNER. Do not make a speech. I have answered the gentleman's question.

Mr. SCHAFER of Wisconsin. You are afraid of the question because another body increased antimony and antimony oxide—

Mr. GARNER. I decline to answer where a man asks a question and then gives the reason himself.

Mr. CRISP. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. CRISP. Is it the gentleman's idea that if his plan is carried out that the House would not vote separately on the various schedules but would vote en bloc after the schedules had been debated whether they preferred the House or the Senate amendments?

Mr. GARNER. Yes; I say that for this reason: To take all the individual amendments and consider them individually at this late day is impossible. Impossible on account of the lack of time. I doubt if the country would approve of a vote on each separate amendment, but the country would indorse the common-sense idea of giving the Members an opportunity to express themselves en bloc on the various schedules.

Mr. BACHARACH. Will the gentleman yield?

Mr. GARNER. Yes; once more.

Mr. BACHARACH. The gentleman was here when the Underwood bill was passed, when the Democratic Party was in control, and the Democrats had a caucus in which each man was bound.

Mr. GARNER. You have asked that old question about seventy-five times.

Mr. BACHARACH. Why was not the gentleman—

Mr. GARNER. Does the gentleman want to ask a question or make an oration?

Mr. BACHARACH. I will ask the question. Why was not the gentleman then opposed to it when he was in the majority as he now is when he is in the minority?

Mr. GARNER. The gentleman comes back and says, did not you do this way in times past? You have no reason why the House of Representatives should not have an opportunity to express itself on the rates, and you can not give a reason to save your life. You have to go back and ask: "Did you not do so and so when the Underwood bill was passed?" The difference between the Democrats and the Republicans is this: We undertook to confer, and worked together under caucus rules, but you do not do anything except to follow the bosses, and you do not give the Democrats any opportunity to consider the bill, while you were given opportunity to consider and offer amendments to the Underwood bill.

Mr. SNELL. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. SNELL. Will the gentleman tell us how the Democratic party considered the 637 amendments on the Wilson tariff bill in 1894?

Mr. GARNER. I will refer that to the gentleman from Iowa [Mr. RAMSEYER], an authority on what occurred before the Civil War. [Laughter.] I will let you work that out with him.

Mr. TREADWAY. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. TREADWAY. Do I understand the gentleman wants an opportunity to consider the amendments the Senate has adopted?

Mr. GARNER. Yes.

Mr. TREADWAY. The gentleman will be a member of the conferees—

Mr. GARNER. I will tell you I do not want to monopolize the whole thing. [Laughter.] I want to give the Republican Members some chance, and I am also solicitous about my Democratic colleagues. I want to give them some chance, and they will not have any chance after it is sent to conference. I want to give them a chance to go back to their constituents and say I did my very best to raise or lower the rates, as the case may be.

Mr. TREADWAY. Does not the gentleman consider that he is a worthy representative of his colleagues?

Mr. GARNER. Oh, yes; but they are also worthy representatives of themselves.

Mr. TREADWAY. I think they have entire confidence in the gentleman and will trust to his judgment.

Mr. GARNER. Let me give you some of these rates. Take the chemical schedule. It is pretty hard to give the rates to you in percentages, but in general percentages that you understand, and that the ordinary man, such as myself, understands. I will give the percentages in reduction or addition with respect to the differences in the Senate bill and the House bill; that is to say, how much lower the Senate rates are or how much higher than the rates in the House bill.

In the chemical schedule there is a decrease by the Senate from the House rates of 1.58 per cent, which is 4.9 per cent of the House rates. There would have been a larger decrease there, as there was a larger decrease in the report of the Senate Finance Committee from the Senate action itself. The reason the reduction is not more is because of the increase for casein. If you were to eliminate casein you could very easily increase that percentage up to probably 6.4.

Next let us take earth, earthenware, and glassware. There is a decrease there from the House rate of 1.98 per cent, which is a decrease of 3.6 per cent of the House rates.

On metal and manufactures of metal there is a decrease in the Senate rates of 3.68 per cent, which is a 10 per cent decrease of the House rate. I would like to vote for that. I have examined that schedule. I would like to vote for that and for the chemical schedule. I can not tell about the others. I have examined the chemical schedule and the metal schedule. I want to vote for that decrease. I will not have a chance to vote for it if you send it to conference without giving the House an opportunity to consider that schedule. I am willing to vote for it en bloc. As I say, the better way and the more intelligent way would be to go into the Committee of the Whole and consider the amendments as we do in an original bill, without the gag rule you had, under which nobody could offer an amendment.

Next, let us take wood and manufactures of wood. There is a decrease of 9.69 per cent which is 38 per cent of the House rates. I do not know whether I would adopt that or not. I would have to look into that. That is a considerable change; but if I did favor so great a change, I would vote for it; and if not, I would vote against it and send it to conference. You ought to have that right. These gentlemen laugh at you and say: "Do you not want to vote for these things?" Why do not you gentlemen want to take the responsibility and the obligation of representing the people of your district and the country here to write the law. You are not afraid, are you? You would rather trust HAWLEY and TREADWAY and BACHARACH than trust yourselves. [Laughter.]

Mr. SNELL. Mr. Speaker, will the gentleman yield?

Mr. GARNER. Oh, I have got to read through these percentages first.

Mr. SNELL. Right on that point.

Mr. GARNER. I would rather not. I struck at just three, and now you want to come in with reserve recruits. I would rather get through first with the Ways and Means Committee.

Mr. TREADWAY. Would the gentleman yield to one to whom he has referred?

Mr. GARNER. Yes; I will have to. I am afraid not to yield to the gentleman; because I am afraid of losing influence and caste on the Republican side of the House I have just got to yield to the gentleman. [Laughter.]

Mr. TREADWAY. I would like to know wherein the three gentlemen that the gentleman from Texas has named would fail their colleagues, inasmuch as the gentleman from Texas intimates that he knows us better than they do themselves.

Mr. GARNER. Well, that is all a matter of opinion. My opinion is that you and HAWLEY and 50 per cent of BACHARACH [laughter] are going to do just what you are told to do, and we all know what that is.

I desire now to have the attention of 21 of you gentlemen over there on the Republican side who made speeches against the sugar schedule.

The SPEAKER. The time of the gentleman from Texas has expired.

Mr. GARNER. I want to get some more time, Mr. Speaker.

Mr. CROWTHER. Mr. Speaker, I ask unanimous consent that the gentleman may have 60 minutes more.

The SPEAKER. The gentleman from New York asks unanimous consent that the gentleman from Texas may proceed for 60 minutes. Is there objection?

There was no objection.

Mr. GARNER. I do not think that I will want that much time, but I just wanted to test this bunch over here to see whether they would give it to me.

Mr. CROWTHER. That will give you plenty of time to—

Mr. GARNER. Oh, yes; I know it will, and I will be glad to yield to you some of that time. Twenty-one of you gentlemen made speeches against the increase in the sugar rate. You have a chance here now to vote on the sugar rate and reduce it 15 per cent, if you want to. If you 21 men on the Republican side who made speeches against the provisions of the House bill in the sugar schedule will vote against the previous question when Mr. SNELL brings in his rule, we will give you an opportunity to vote the way you talk. Have you got the nerve to do it? Will you practice what you preach? You made speeches against it. You said the rates were too high. You have written your constituents that way. Are you willing now to practice what you preach and vote as you talk? If you are, you will vote down the previous question and we will give you an opportunity to vote on these schedules as they come up, and sugar is one of them. Remember, now, when you send the bill to conference that you can not get the rate on sugar except be-

tween 3 and 2. That is all there is to it—2 cents or 2.40—and you can not get anywhere except between those two. You ought to have an opportunity to express yourselves as to whether you want 2 or 2.40. If you vote down the previous question you will get that opportunity, and you can then tell your constituents when you go back home that you really meant it, because you voted down the previous question.

Mr. RAGON. Mr. Speaker, will the gentleman yield there?

Mr. GARNER. Yes.

Mr. RAGON. I will ask the gentleman whether there is any other way for these gentlemen who have manifested antagonism to rates by which they can manifest their opposition than by voting as you have indicated here against the motion sending the bill to conference?

Mr. GARNER. Here is what the RECORD will show and what the vote in the House will show, that you voted for a rule to disagree to all the Senate amendments. Remember the language of it. If anyone is shrewd enough to place it properly before the public, the public will know that you did not want to vote against a single amendment, because you wanted to vote for a rule against all Senate amendments and send the bill to conference. If there is a single Senate amendment that you want to vote for, how will you explain that you voted against all Senate amendments and sent the bill to conference?

Mr. RAGON. That includes the increase of the agricultural rates that the Senate put in the bill.

Mr. GARNER. Yes. I will come to that in a moment. You will have to go on record as voting against all the Senate amendments, whether it be a particular item in behalf of New England or California or Texas. You are against all the Senate amendments, and you want to send this bill to conference.

I would like to vote on the Senate amendments to the sugar schedule—No. 5. I put myself on record as I go on. On tobacco and manufactures of tobacco there is a decrease of 5.7 per cent of the House rate. My opinion at the present moment is that I would vote against that. I think there ought to be some increases instead of decreases on the tobacco schedule.

Mr. CROWTHER. Mr. Chairman, will the gentleman yield?

Mr. GARNER. About the tobacco schedule?

Mr. CROWTHER. No.

Mr. GARNER. Well, I do not want some foreign provision put in while I am talking about the tobacco schedule.

The next is the agricultural schedule, an increase of 7.6 per cent of the House rates. The Senate considered these various schedules, and here is the result of their work—a decrease on all schedules except the agricultural, and in that case they make an increase of 7.6 per cent of the House rates.

I would like to vote for that. You people who have been professing that you wanted to help agriculture; you people who have been writing to your constituents that you are anxious to bring agriculture up to a parity with industry—what will you tell your constituents when you vote against agriculture under these amendments that the Senate has put on in behalf of agriculture? You want to send the bill to conference when the conferees will embrace one man from Oregon and one from Massachusetts and one from New Jersey and perhaps one from California.

Mr. RANKIN. Mr. Speaker, will the gentleman yield there?

Mr. GARNER. Yes.

Mr. RANKIN. I want to inquire of the gentleman from Texas if it is not a fact also that the Senate has provided for an export debenture on wheat and cotton and other agricultural commodities of which we produce an exportable surplus? Today wheat is selling in the United States at the same price as it sold for 30 years ago, and cotton is far below the cost of production.

Mr. GARNER. Yes; I understand that agriculture is in bad shape, and nearly everything else is in bad shape.

Mr. RANKIN. Under your program would we have an opportunity to vote on that amendment?

Mr. GARNER. I would not object to that, but I realize that it would be asking too much of the Republican side of the House to agree to that or to the administrative provisions. But I do say that if I were a Republican, an administration Republican, if you please—and if I were a Republican I would be an administration Republican.

Mr. SCHAFER of Wisconsin. Mr. Speaker, will the gentleman yield right there?

Mr. GARNER. No; and you are not an administration Republican, and I will not yield to you. [Laughter.]

Mr. CROWTHER. Mr. Speaker, will the gentleman yield to me?

Mr. GARNER. In a moment.

If I were an administration Republican I would vote for an opportunity to vote on the Senate amendments to this bill. I

am not afraid to tell the world where I stand when any question comes up. You are not afraid, are you?

Mr. CROWTHER. No.

Mr. GARNER. And you would be willing to let your constituents know where you stand, would you not?

Mr. CROWTHER. Yes.

Mr. GARNER. You are not afraid to tell where you stand, but you want to keep the other boys in line?

Mr. CROWTHER. I do not pretend to keep anybody in line. It is my duty to keep myself in line.

Mr. CRISP. Mr. Speaker, will the gentleman yield?

Mr. GARNER. Yes.

Mr. CRISP. If your policy is followed, would not the effect of it be to expedite the passage of this tariff bill? If the House agreed to the Senate schedules, that would end it. If the House disagreed, then the House conferees in conference would have the House back of them to argue with the Senate?

Mr. GARNER. Yes.

Now, if I can, I want to get the attention of my friends on the Republican side for a moment. I want to say to them that if they want to expedite the passage of this bill—and some in the country have been criticizing the delay in its passage—you can expedite it very materially by considering these Senate amendments en bloc, and if you agree to them, that will expedite matters very materially. But how long will it take to dispose of this bill in conference otherwise? Nobody can tell. I venture to say you will not get it out of conference in four weeks, maybe six weeks, whereas if you adopt the policy I suggest you could agree in less than a week or 10 days, and you would have the tariff bill sent to the White House within two weeks after it is sent to conference. You will avoid at least six weeks of delay.

Mr. CROWTHER. Yielding to the blandishments of the gentleman from Texas—

Mr. GARNER. You ought not to qualify it—you ought not to say "blandishments." [Laughter.]

Mr. CROWTHER. Well, then, let us say logic. I do not desire to be offensive. I realize that I am addressing the leader of the minority, and I have the highest degree of respect for both his logic and his blandishments. I observe in the offing the assistant leader, the gentleman from Mississippi [Mr. RANKIN].

Now, suppose we yield to your blandishment or logic and give your folks and our folks an opportunity to vote on these schedules. Will the gentleman from Texas then vote for the tariff bill?

Mr. GARNER. Yes; if amendments are adopted that I think ought to be adopted, I will vote for it.

Mr. CROWTHER. With an "if"; always with an "if."

Mr. GARNER. Would the gentleman from New York [Mr. CROWTHER] vote for them if they were not according to what the gentleman thinks they should be?

Mr. CROWTHER. I would vote for any tariff bill that the committee brought in here and for a conference report as well. I would vote for it for the protection of American industry. [Applause.]

Mr. GARNER. If it reduced the present rates? If a rule were brought in reducing the present rates by 50 per cent under the 1922 act, would the gentleman vote for it?

Mr. CROWTHER. If the conferees bring in such a bill I will support the conferees. I am a Republican, first, last, and all the time. [Applause.]

Mr. GARNER. I thought the gentleman was a protectionist rather than an obedient servant.

Mr. CROWTHER. Republican and protectionist are synonymous terms, sir. There should be no difference between them. [Applause.]

Mr. GARNER. Some of them have a different idea about it.

Mr. CROWTHER. Yes. They may have a different viewpoint. Many Democrats have a different viewpoint to that of the gentleman from Texas. The gentleman from Texas claims to be a protectionist. I am anxious to see when we get to the wool schedule how the gentleman will feel about mohair from the goat's back.

Mr. GARNER. I will agree with the gentleman now. I will come to the wool schedule now and tell you how I will vote if you will bring it over from the Senate.

Wherever the industrial rates are reduced I am going to vote for them. Now, that general statement is quite clear. Wherever the agricultural rates are increased I am going to vote for them. Wherever the general industrial rates are reduced by the Senate I am going to vote for them. Wherever the Senate has increased the agricultural rates, trying to bring them to a parity with the industrial rates, I am going to vote for them. How about you, Doctor?

Mr. CROWTHER. I am for that. Will the gentleman yield?
Mr. GARNER. Then we will vote together right along. You are going to vote for all of these reductions in rates on industry? I do not think you know what you are talking about.

Mr. CROWTHER. The gentleman knows perfectly well what my attitude is and what his own attitude is. The gentleman is telling us how he would vote, but he will not vote. I shall vote for the bill. May I ask the gentleman if he thinks that any voter in the United States in the fall of 1928, even the wildest optimist of the Democratic Party, had any vision that in the tariff revision there would be a reduction of duties? Does the gentleman think that anybody thought there would be a reduction of duties?

Mr. GARNER. I certainly did not expect increased duties such as have been put in this bill in the House. Does the gentleman think anybody expected any such increases?

Mr. CROWTHER. Yes; I think so.

Mr. GARNER. Well, it is very easy to please the gentleman from New York.

Mr. CROWTHER. The gentleman from Texas knows that only 80 per cent of the items in the House bill were changed by the Ways and Means Committee in preparing the Hawley bill. Not to change the tariff bill rates at this time is a frank admission on the part of everybody that Europe and the United States have stood still industrially for the past eight years.

Mr. GARNER. I am glad the gentleman got more time for me. The gentleman says they only changed it a little. Do you know how much they changed it over the present law—the Hawley-Smoot bill over the Fordney-McCumber bill? Forty-three and fifteen one-hundredths per cent in the House, and 34.62 per cent in the Fordney-McCumber bill. A difference of almost 9 per cent, and the gentleman said they did not increase it very much.

Mr. ALDRICH. Will the gentleman yield?

Mr. GARNER. I yield.

Mr. ALDRICH. Has the gentleman the figures showing the difference between the Senate rates and the rates in the Fordney-McCumber bill?

Mr. GARNER. Yes; I have them here and I will put them in the RECORD.

Mr. ALDRICH. Will the gentleman put those in the RECORD?

Mr. GARNER. Yes. And I also have those for the Underwood bill.

Mr. STOBBS. Will the gentleman yield?

Mr. GARNER. Certainly.

Mr. STOBBS. Would the gentleman vote for an increase of 200 per cent on wool waste, which the Senate put on?

Mr. GARNER. No; I would not. I would not vote for any unreasonable rate.

Mr. STOBBS. Then the gentleman agrees—

Mr. GARNER. I want to say to the gentleman from Massachusetts [Mr. STOBBS] that if I had carte blanche to write a tariff bill, I would write it for his section just the same as for mine. I would write it honestly, without regard to sections or industries of this country, giving adequate protection for American labor and nothing more. [Applause.]

That is the policy I would pursue if I had an opportunity to write a tariff bill. [Applause.]

I complain about the gentleman from Massachusetts and his section of the country because they have been practicing protection at the expense of our people so long that they can not realize what it means to do this to the other sections of the country, in the matter of the theory of protective tariff. It is no better illustrated than by the vote in the Senate on one particular problem. There is one particular gentleman in another body, known by all men as one of the greatest protectionists in America; one of the most effective we have ever had in this country. When it came to protecting southern long-staple cotton, a clean proposition, where do we find the gentleman voting? We find him voting to keep it on the free list. Doctor, you would not do that. You are more consistent and I may say a little more honest than that other statesman that I think of who would not practice what he preaches when it comes to voting a protective duty to southern products.

Mr. STOBBS. Will the gentleman yield?

Mr. GARNER. I yield.

Mr. STOBBS. New England did not want any increase in the duty on wool waste, and the House did not put on any increase except one-half of 1 per cent, but there was an increase of 200 per cent put on wool waste in the Senate, at the request of the woolgrowers of the South.

Mr. GARNER. No. Massachusetts did not want a duty put on any raw material that it uses. That is the truth about it. You do not want a duty on anything that Massachusetts has to buy, but you want a duty on everything that Massachusetts sells, do you not?

Mr. STOBBS. Yes.

[On the next day the following proceedings occurred:

Mr. STOBBS. Mr. Speaker, I desire to correct the RECORD on page 5734, in the first column, where the gentleman from Texas [Mr. GARNER], in making a statement in reference to Massachusetts, the RECORD shows that I said "yes." As a matter of fact I made no reply. The RECORD is in error in stating that there was an affirmative answer on my part.

Mr. GARNER. I again refer to the reporter's notes—they were not changed in this particular. I understand the explanation of this matter by the gentleman is that he did not answer but nodded his head, and the stenographer took it as "yes." The gentleman reflected what was in his mind at the time but did not come out and say so, but merely nodded his head.

Mr. STOBBS. The stenographer says that I did not say "yes" but nodded my head. I did not nod my head in acquiescence. My attention was temporarily diverted by a remark addressed to me by a gentleman who sat beside me and I was not following further the remarks of the gentleman from Texas and did not actually hear his inquiry addressed to me and could not under the circumstances, and would not if I had heard the inquiry, have acquiesced or answered it affirmatively.]

Mr. GARNER. Certainly. You are an honest, square fellow. You say that you want everything that you buy free and you want everything that you sell protected. That has been your custom for fifty or a hundred years. Now, when they begin to apply this policy of protection throughout the country Massachusetts has got to suffer, and as I said on the floor of this House in the discussion of this bill, if you will apply the protective tariff theory honestly throughout the country, New England can not live economically. She has got to come to free trade. No other thing can possibly save you if you apply the protective theory to all industries in every section of the country impartially.

But you do not want that, and one of your spokesmen, sir, was bold enough, as you are now, to say before the Ways and Means Committee, that he understood the Republican position to be that you were for free raw materials and protected manufactures. He said that was the Republican theory in Massachusetts, and he said that was the Republican theory throughout the country, and he is one of the high Republicans in your State.

Mr. SCHAFER of Wisconsin. What is the Democratic theory in Massachusetts? Some of the remarks of gentlemen from Massachusetts in another body would be rather interesting.

Mr. GARNER. I do not yield to the gentleman from Wisconsin for the purpose of discussing somebody from Massachusetts. If he will take care of his own State, I am sure he will be doing pretty well. I doubt if he is going to do it, however.

Mr. TREADWAY. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. TREADWAY. I think the gentleman has misrepresented the attitude of Massachusetts and New England on the entire tariff issue, but we will debate that later. I do, however, want to ask the gentleman a distinct question, whom he was quoting as the authority on the tariff from Massachusetts when he said that any such evidence was submitted as the gentleman from Texas has mentioned?

Mr. GARNER. I think the man's name was Johnson.

Mr. TREADWAY. Where is the evidence the gentleman from Texas is trying to give to the House?

Mr. GARNER. It is in the hearings before the Ways and Means Committee, sir.

Mr. TREADWAY. Let us have it.

Mr. GARNER. It is in the record, and the gentleman can look it up.

Mr. TREADWAY. I do not think any evidence was given before the Ways and Means Committee which contained the statement the gentleman from Texas has made to the House as coming from a man from Massachusetts. If the gentleman has the man's name, I would like to have it, because it is not true, and we will refute it every day in the week.

Mr. GARNER. I did not want to be taken off on the question of testimony before the Ways and Means Committee.

Mr. TREADWAY. I think I made a fair inquiry of the gentleman from Texas.

Mr. GARNER. I will undertake to have Mr. Price look up that record, and get the names of these two men. I think one was from Massachusetts.

Mr. TREADWAY. The gentleman is backing away a little bit now.

Mr. GARNER. They testified before the Ways and Means Committee and said it was their understanding that the Republican doctrine was free trade in raw materials and protection on manufactured articles.

Mr. TREADWAY. The gentleman is as wrong about the theory as he is about the testimony. We would like to have the evidence submitted, but I do not believe it exists.

(Subsequently, Mr. GARNER received permission from the House to insert the following from the hearings of the Ways and Means Committee:)

STATEMENT OF HENRY M. CHANNING, REPRESENTING THE ATLANTIC GYPSUM PRODUCTS CO., BOSTON, MASS.

(Including crude gypsum, par. 1843)

Mr. CHANNING. Mr. Chairman, and gentlemen, I represent a very different angle from that presented by Mr. Avery, who speaks for a great national company. I speak for a New England effort, an effort to put an industry into a section which is lacking in raw materials, and whose other industries are not doing any too well.

I speak of an effort to take a great plant in Portsmouth, N. H., idle for many years, and put into that plant a sound industry to meet the needs of a purely local New England market.

We investigated the possibilities, and we found that gypsum products were consumed to an extent in New England which justified the use of that property for gypsum. We investigated the possibilities of getting our raw materials from western New York, where these gentlemen are. We determined that, due to the freight rates and due to 20 per cent of water in the crude gypsum, which is taken out by calcination and preparation for market, we could not hope to compete in New England with those who manufacture the domestic rock at their doors. We looked up the tariff laws, knowing that crude gypsum was on the free list. We saw that it had been on the dutiable list for three successive Congresses, and then that a strong Republican protectionist Congress in 1922 put that crude gypsum on the free list. It put it there, gentlemen, for a purpose. That purpose we conceived was to promote the Republican policy of protection and encouragement of industries where they could not get raw materials elsewhere, and to give us an opportunity to develop, for our own markets, our own manufacturing industry.

We followed our belief that we could rely on the policy of a strong protectionist Congress to be continued by such a Congress. We acquired a plant in New York and a plant in Chester, Pa., in order that we might get a large enough volume of rock consumption to enable us to hope to compete with the big companies, and we have invested a very large amount, purely of American capital, in what is purely an American industry, and primarily a New England industry, built for that purpose.

It is said that we have an advantage of many dollars per ton by reason of our cheap rock. It is said that we have refused to give figures. I gave the Undersecretary of the Treasury recently our costs of rock for 1926 and 1927.

I will say that we are a young company and our figures are not long and complete, except in the plant we took over in New York. We have the Pennsylvania figures. Those figures on the rock pile at our plant have run from \$2.80 to \$3.88 a ton.

That is considerably more than double what the crude material of the New York manufacturer costs him at his plant.

We are going ahead and we are manufacturing in these three plants. We are standing heavy losses every month we continue at these prices; and, gentlemen, if you change your protectionist policy of giving New England, without raw materials, a chance to develop its markets you destroy an industry with a splendid prospect for us and we are through.

Our effort again has been an effort to make New England independent; to give her a chance to develop her own markets, where raw materials can not be obtained from other sources in competition with those other sources. You take away and destroy our manufacture in New England in order that you may give both the mining and manufacturing to western New York State.

We ask you gentlemen to continue, if you will, your established Republican policy of protection of this industry, where we have followed your lead and done our best to build it up.

There were a number of what I conceived to be radical misstatements in the picture presented by the other side, but I take it that I can confer with my associates and file with you such facts in written form as I choose, so I will not go into a refutation of what he has said.

I have covered in somewhat briefer form than I wanted to the essentials.

I have these gentlemen here with me so that I may answer any questions you desire to ask.

Mr. TREADWAY. Did I understand you to say that the difference between you and the last witness in effect was that he wanted to get the benefit both of the local product—mining the gypsum, and a duty on the imported gypsum, whereas in the case of your company, your company mines in this country all the gypsum?

Mr. CHANNING. Oh, no. On the contrary, I said that we were landed with this big plant at Portsmouth, which had been in disuse for a great many years, and in our effort to find a sound industry we could put there for a market for New England consumption which seemed to be

in that field, we investigated the sources of supply. We found that the western New York manufacturer, with his material at his door, could come into New England and beat us at the game, because if we bought our rock or mined it in western New York, we should have to carry 20 per cent of water with our crude gypsum. Then we should have to ship a part of it back toward western New York. So that the absorption of freight on the water, plus absorption of our freight rates going back toward him, would kill us, and that our only hope in that line was to take advantage of the Nova Scotia rock which was at that time on the free list, having been placed there by a Congress, as we understood, for a protectionist measure, and from reading the record it appears that it was to protect this group of domestic manufacturers who had been on the seaboard for many years and who had been having a hard time.

One of the gypsum plants we took in Pennsylvania was out of production from 1916, I think, until 1926. They have been unable, with this rock, to make any progress there.

Mr. TREADWAY. Is your New Hampshire plant running successfully now?

Mr. CHANNING. It is running very successfully, sir, but the prices are such that, as I say, we have to absorb very heavy losses every month we are operating. It is not a question of our standing a tariff. We are running heavily under water. Every ton that we put out means a loss, due to this price condition which is countrywide. As Mr. Avery said, we are in the way.

Mr. TREADWAY. Do you agree with him that the production over-supplies the demand at the present time?

Mr. CHANNING. Absolutely.

Mr. WATSON. Do I understand that you and your associates are entirely satisfied with paragraph 205 as it is now written?

Mr. CHANNING. Is that the paragraph that crude gypsum is on the free list?

Mr. WATSON. One dollar and forty cents per ton.

Mr. CHANNING. The \$1.40 per ton duty has kept practically any substantial amount of manufactured gypsum or gypsum products from coming in. There is a certain amount, but not a serious amount.

Mr. WATSON. I thought I understood you were satisfied with the tariff as written in paragraph 205.

Mr. CHANNING. As I say, we have not found any necessity for increasing the tariff on the manufactures of gypsum.

Mr. WATSON. But you are satisfied with it as it is?

Mr. CHANNING. Yes, sir. Crude gypsum, which we are interested in, is on the free list. We are interested in having the law stay as it is.

Mr. WATSON. Then you are satisfied?

Mr. CHANNING. Yes. We have no objection to the tariff on manufactures of gypsum being increased if you think you ought to, but our position is that we would rather let well enough alone.

Mr. CHINDELOM. Mr. Chairman, the gentleman first mentioned Portsmouth, N. H., and did not follow that up.

Have you a plant at Portsmouth, N. H.?

Mr. CHANNING. We have a large operating plant and a plant in which we hope to develop other lines of building materials which have their market in New England, our theory being that there are certain heavy commodities which New England uses a lot of that are not now being made there.

Mr. CHINDELOM. Do you use Portsmouth as a port of entry?

Mr. CHANNING. We use Portsmouth as a port of entry.

Mr. GARNER. Mr. Channing, if I understand you, you made this investigation and started these three plants—one in New York, one in New Hampshire, and one in Pennsylvania—upon the theory that the New England idea of protection would continue to prevail, and that they would give you raw material free and give you protection on your manufactured article?

Mr. CHANNING. Yes, sir.

Mr. GARNER. That is the Republican position, as you understand it?

Mr. CHANNING. I understood that that was the position in 1922, and that it was so to-day where industries which had been built up on the faith of that protection could not get their raw materials elsewhere and continue to live.

Mr. GARNER. In other words, if New England could continue to get the products of the mines and the farms and the ranches free and at the same time have protection, she could continue her development and be superior financially, as she has in the past?

Mr. CHANNING. Well, I think there is a great distinction, Mr. GARNER, between getting raw materials for our own local New England consumption and where we are manufacturing in New England, and then spreading things out through the country.

Mr. GARNER. Well, I say, you want free raw material for New England purposes, regardless of what effect it may have on the balance of the country?

Mr. CHANNING. No.

Mr. GARNER. Well, undoubtedly the protection or gypsum would be beneficial to that product in this country. Now, it is not produced in New England, and you are opposed to giving any protection to the balance of the country in order that New England may develop its industry.

Mr. CHANNING. The only part of the country that is affected, I am very sure, Mr. GARNER, or would be, no matter what tariff you put on, is what Mr. Avery described as this little 30-mile area, these four or five big cities right on the coast that have had that industry for a hundred years.

Mr. GARNER. Is your Pennsylvania plant now located so that it just supplies the local market there in Pennsylvania?

Mr. CHANNING. That is all. That is all it does for us. Still, it might come to Baltimore and possibly to Washington, but right along on these coast cities. We can not get in against freight rates against the interior plants. There are plants in Virginia. There are two of them.

Mr. GARNER. You may not get the viewpoint, but it seems a little strange to the fellow living in the Middle West or the South or the West, I might say, that we must pursue a policy of giving protection to New England and giving them all of their raw material free, and not giving protection to that country that produces the raw material. We can not understand that. Of course, I never heard it declared before that that was the Republican policy. I understood it was the Republican policy in New England, but you are the first one I ever heard declare that it was the Republican policy.

The CHAIRMAN. The Chair will have to rule against political debate.

Mr. GARNER. Well, the gentleman said the reason he made this investigation was because he understood it was the Republican policy to give free raw material and protection to the manufactured article.

Mr. CHANNING. Free crude gypsum. They took gypsum off in 1922, from the tariff list, where the Democrats had kept it, and they only did that for a purpose, Mr. GARNER, and that purpose was to help the established gypsum mills on the coast that could not get their raw material anywhere else.

Mr. GARNER. The 1913 act had a duty on gypsum.

Mr. CHANNING. Yes. That was a Democratic Congress.

Mr. GARNER. Extract from statement of J. Franklin McElwain, Boston, Mass., representing the National Boot & Shoe Manufacturers' Association—page 8704, tariff hearings, 1929:

Mr. RAMSEYER. Now, you are asking a duty of 25 per cent on all shoes?

Mr. McELWAIN. Yes, sir.

Mr. RAMSEYER. And boots?

Mr. McELWAIN. Yes, sir.

Mr. RAMSEYER. And you are asking for free trade in hides?

Mr. McELWAIN. Yes, sir.

I also call the attention of the gentleman from Massachusetts [Mr. TREADWAY] to the statement made by his Massachusetts colleague [Mr. STOBBS] in answer to question asked by me to-day as to the kind of a tariff Massachusetts desires.

Manufactures of cotton: There has been a Senate reduction of 5.43 per cent, which is 12 per cent of the House rate. I would like to vote for that. I would like to have an opportunity to vote for it, and there is nearly as much cotton manufactured in the South now as there is in New England. I would like to vote for that, regardless of how my friend from North Carolina [Mr. KERR] may stand on it, the gentleman from Massachusetts, or anyone else.

I have examined the schedule, and I know in my own mind that the rates put in the House bill are indefensibly too high. They have been reduced in the Senate, and I would like to get a chance to vote for it. Would you not like to get a chance to vote for it? I think you would.

Flax, hemp, jute, and manufactures thereof reduced 1.1 per cent of the House rate. Well, I am sure that makes very little difference, but I certainly would vote for that reduction. Wool and manufactures of wool, 1.6 per cent of the House rates. I surely would want to vote for that, although I come from a wool-producing State. Are you willing to go on record and say you want to vote for it? I am willing to take my political life in my hands, if necessary, and vote for a reduction, which I think ought to be placed in this bill.

I stated on the floor of the House before if you would let me write every rate, every line in the bill, with the flexible provision in the bill, I would not vote for it. That settles that, and whatever the rates may have been I am willing to take the penalty.

I want to vote to reduce that woolen schedule, as the Senate has done.

Manufactures of silk, a reduction of 3½ per cent of the House rate. I would like to vote for that.

Manufactures of rayon. Now, I do not know much about the rayon schedule, and I doubt if anyone else does, because, if you will remember, it is a new schedule, and only experts can tell anything about it, and besides it is a new industry.

I would not say I would not vote for the Senate rate, raising it 59 per cent, which is 1.1 per cent of the House rates, if I thought it advisable, and I say frankly I do not know.

Paper and books. A reduction has been made in the Senate. I would like to vote for that.

Now, here is the most important part of the bill so far as the rates are concerned. I refer to the schedule relating to sundries. You will remember a long list of sundries. There are amendments running up into scores and scores, applying to particular items. They have reduced them 7.68 per cent, which is 26 per cent of the House rate. You get a reduction on sundries of 26 per cent, and I want to vote for it. What would you do about it? You ought to examine it. You ought to see about it. You ought to vote for an opportunity to look into it and have an opportunity to consider it.

I am only appealing to your conscience, your duty as men in the American Congress selected by great constituencies. Why do you not take the responsibility and undertake to consider these schedules and vote on them en bloc? It can be done without any great inconvenience. It can be done without delay. In fact, it will facilitate the passage of this bill. Why do you not do it?

I have asked that question and the answer is, because they did not pass the Wilson bill in that way or the Underwood bill in that way. That is the only reason that has been given this morning. I thought when his highness, the Speaker, came down he had come to answer that. I thought he might be able to give some reason which would be different from that given by others. I wondered whether he had any other reason as to why we should not consider these schedules one at a time, but I doubt if I will ever get any answer to that.

Mr. Speaker, there are the comparisons, and it is up to you gentlemen. I knew this morning that question would be asked me and I discussed it. It was discussed by Senator CONNALLY and some other gentlemen whose judgment I respect very much, the matter of what is the duty of a Democrat. Now, Tom CONNALLY is a partisan, but he is patriotic, and all he wants to do is to take care of the best interests of this country, and that is what I want to do.

Suppose you did adopt all these rates that are put in? Then here is the query that comes to me: What is my duty?

You brought this bill back here and you considered these amendments en bloc; you voted for the amendments I thought you ought to vote for, you voted against the amendment I thought you ought to vote against, so the Senate bill is perfected so far as I can perfect it. What is my duty? It is a very serious question.

This question is not so serious from a Republican standpoint. Party organization, party activity, might very well cause one to excuse himself and say, "I am going along with my party." It is a little different with one on the Democratic side.

You have on the statute books at the present time a law that has been denounced by every Democrat from every stump in the United States for the past eight years. You have never heard a good word come from Democratic lips for the Fordney-McCumber law, the most execrably drawn law that was ever put on the statute books of this country. It treated agriculture worse than any bill that was ever drawn. So we have denounced it.

The Democratic Party promised, the Republican Party promised—we all promised as far as we could—to relieve agriculture in every possible way.

Now, when it comes down to the final analysis, what is my duty when agricultural rates have been increased, when industrial rates have been increased, the flexible provision has been removed, debenture is in the bill? What is my duty? Leave the present law with flexibility in the hands of the President, with agriculture not taken care of, or to vote to substitute another law?

I know this much: I want an opportunity to vote on these provisions, and I do not like to cross a bridge before I get to it. I do not believe if you send this bill to conference it will come out anything like I have described. I know I could not vote for it then; but if it were put up to me at this moment as to what I should do if they permitted me to perfect the Senate bill as I have suggested, my judgment is I would vote for it and displace the present law.

The Senate's change as to the flexible provision alone is worth the price. Taking away from the President of the United States the right to make laws is worth the price, especially when the new flexible provision says that Congress shall consider the tariff bill in the future by paragraphs or by schedules. I think I would take it, if they would give me the Senate bill as it is to-day. Of course, I do not know what it will be tomorrow; but with these percentages, in my judgment, it would be a fairer and a more nearly just law, and then in the future Congress, with its right to legislate once more restored, could amend it and adopt rates according to what they believe they ought to be. Unquestionably, this would be a better policy than the present law, giving to the President of the United

States the power to write the law and increase or decrease rates 50 per cent.

Mr. TREADWAY. Will the gentleman yield once more?

Mr. GARNER. I yield.

Mr. TREADWAY. I would like to ask the gentleman if he prefers—I assume he does from what he says—the Senate provision with respect to the flexible tariff feature to either the House provision or the present law?

Mr. GARNER. I do.

Mr. TREADWAY. I am pleased to know that.

Mr. GARNER. And every other patriotic man, with all due deference to them, who has given the question consideration in connection with our form of government, believes the same way. You know, and every one else except the "me too men" knows, that for Congress to surrender its power to legislate with regard to levying taxes is vital and ought never to be done.

Therefore I say I would support it; and let me tell you, further, that if you would let me write the rates, write every line in this bill, and then ask me to surrender to the President of the United States the right to levy taxes in the future, I would say that the price is too great to secure justice in the matter of rates and then surrender the very heart of this Government with respect to a matter of policy. I would not do it. This is one thing that appeals to me so strongly in the Senate bill. We have the opportunity to take the flexible provision out of the present law and restore this power to the people, through the Congress, which power is now lodged in the President of the United States.

Mr. HASTINGS. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. HASTINGS. Would it not be just as logical to surrender our right or power to make appropriations as to surrender the right or power to say what the tariff duties shall be?

Mr. GARNER. More, so, sir; very much more so.

Mr. Speaker, I am not telling anything out of school in making this statement, and the President can deny it if he wants to, or someone for him; but when this bill passed the House of Representatives certain gentlemen—Members of the House of Representatives—were visiting with the President of the United States, and they were telling him they did not see how they could defend themselves in voting for these large increases in industrial rates, and the President is reputed to have said, "Go home and tell your people that is all right; the President is going to use the flexible provision in the bill to correct such conditions." I do not know that this was his exact language, but at least, sir, it is reputed that that is what he stated you could tell your folks when you went home "These rates are indefensible; I realize they are too high, but we have a wise and patriotic President and he has the power under the bill to reduce them or to increase them and you can make them all happy in this way."

But, my friends, this was at a time last summer when Hoover's sun was shining. Its glory blazed and blinded everything, but to-day, sir, if you went back home and told the folks that, you would find that the mist is there. The clouds have come and just how long they are going to remain before there comes complete darkness in your administration is only a question of time in my opinion.

Mr. BARBOUR. Will the gentleman yield?

Mr. GARNER. I yield.

Mr. BARBOUR. Do I understand the gentleman to say that the President made that statement to me?

Mr. GARNER. No; I was looking at the gentleman, but I did not say that the President made that statement to him. I might reply by asking the gentleman from California if he ever talked with the President on that question, and what he said.

Mr. BARBOUR. I never talked with the President about it.

Mr. GARNER. I thought I might get that information while I had the witness on the stand. [Laughter.]

Mr. LEAVITT. Will the gentleman yield?

Mr. GARNER. Yes.

Mr. LEAVITT. Did the gentleman support the Underwood bill, which put everything Montana produced on the free list?

Mr. GARNER. Now there is the Underwood bill again; you can not get away from it.

Mr. LEAVITT. The gentleman supported that bill.

Mr. GARNER. Yes; I will put it in the RECORD that I helped to draw it. It was stated on the floor of the House that I got protection in it; I have been charged with that, and therefore I am a protectionist.

Mr. Speaker, I wish this House would maintain itself, restate itself, in the eyes of the people of this country. I wish we could retain it throughout the country by giving some intelligent consideration to important legislation like this. Do not you know that the country would commend us if we gave intel-

ligent, serious consideration to this bill rather than indorsing it in the hands of conferees and without any consideration by the House of Representatives? We never have had a chance to consider it. My friend from Ohio, Mr. MURPHY, was helpless; he did not get a chance to offer his amendments. He had many amendments that he wanted to offer, and others might have had amendments.

The bill went to the Senate, where it was amended in 1,500 or 2,000 items. I do not want to have them considered in detail, but to consider them en bloc, schedule by schedule, 10 minutes or 30 minutes, or whatever time you want on each schedule, will be acceptable to me. Why do not you do that? Why not have the consciousness of voting your own way and giving some consideration to the most important piece of legislation that will be passed by the Congress at this or any other session?

Mr. Speaker, I am putting into the RECORD this data that I have referred to, with a view of you gentlemen on the Republican side getting the information, if you desire it. When the bill comes over here from the Senate, I hope the Speaker and the chairman of the Committee on Rules [Mr. SNELL], and the majority leader [Mr. TILSON], who is now ill in a hospital we are sorry to say, will get together with the steering committee and give the House an opportunity to express itself. Give me an opportunity to go on record for protection, if you want to. I would rather vote my own conscience, my own judgment, exercise my own patriotic viewpoint and stay at home than to sit in my seat and be so cowardly and negligent of my duty to my country as not to take the responsibility of voting on the most important piece of economic legislation that will come before this country. I am very much obliged for the extension of this time. [Applause.]

Mr. CROWTHER. Mr. Speaker, I ask unanimous consent to address the House for 10 minutes.

The SPEAKER pro tempore (Mr. LUCE). The gentleman from New York asks unanimous consent to address the House for 10 minutes. Is there objection?

Mr. BACHARACH. Reserving the right to object, and I shall not do so, the chairman of the Committee on Ways and Means has 30 minutes this morning. Would not the gentleman rather defer until after he has finished?

Mr. CROWTHER. Oh, certainly.

Mr. HAWLEY. I have no objection to the gentleman proceeding at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. CROWTHER. Mr. Speaker and ladies and gentlemen of the House, of course we have all been interested in this wildly impassioned plea of the gentleman from Texas [Mr. GARNER] regarding an opportunity that should be presented for votes on the several schedules of the tariff bill. Of course, the idea is new, and it is something that has never been done before! The gentleman from Texas, of course, had an opportunity in years gone by—though he does not want ancient history referred to—to present this sort of a program; but then he was as silent as the grave. He then was a "me-too" Member; but he does not want anything said about that.

The gentleman characterized the Fordney-McCumber bill as the worst measure ever drawn for agriculture. He says that none of us will say that it was a good bill. I will say it was a good bill, the best one ever written up to this good hour; and let me say this to the gentleman from Texas, that agriculture had everything in that bill that it desired when the bill was written. Agriculture at that time thought that it was a good bill. Events as they happened in the passing of time proved that there were weak spots in it, many of which were improved by action under the flexible provision, and others we have tried to remedy in the Hawley bill as it passed the House. The fact of the matter is that the attitude of the gentleman here and his speech is nothing more or less than an attempt to bolster up and try to strengthen the coalition that he would like to form in the House here, which has been a matter of open invitation for some time. He craves to have some pseudo Republicans on our side join with the regular Democrats in a coalition to defeat the purpose of the protective tariff.

In Collier's Weekly a few weeks ago Uncle Henry, a well-known character, was discussing with Mr. Stubbs, "What is a pseudo Republican?" Uncle Henry said:

Mr. Stubbs, he is a kind of quadrennial plant, one that blooms every four years, and sometimes the blooms are not very much to look at. He is a Republican every four years at election time, when he is a candidate, and he performs all through the campaign like a trained seal, lies lovingly at the feet of his master, looking at him with seal-brown eyes, waiting for the piece of dried fish to be thrown to him; but after the election is over and the Republican Party endeavors to legis-

late on some of its fundamental policies and revise the tariff, then the pseudo Republican with a wild scream of anguish and a long wail of despair sinks his teeth into the President's hind leg so deep that it takes a tractor to draw them out.

[Laughter.]

That is a fair description of a pseudo Republican. I do not believe that we have in this body many of that type, and the gentleman from Texas [Mr. GARNER] is still scouting for recruits to his widely advertised combination. I think to-day if one were to write an up-to-date sign and hang it on the door of Leader GARNER it would read in this way: "One coalition for sale, slightly damaged; no reasonable offer refused. Apply to JACK GARNER, minority leader's room." [Laughter.]

The gentleman from Texas [Mr. GARNER] speaks of his distinguished, patriotic colleague in the other body, formerly a Member of this house, and I recall that he and his colleague both supported the amendment for a duty on oil. I congratulate him on having seen the light, for he persistently attacked the protective-tariff policy on this floor.

Mr. SCHAFFER of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. CROWTHER. Yes.

Mr. SCHAFFER of Wisconsin. They also voted to increase the duty on antimony to protect Cooksen & Co., a British concern, which indicated that they were going to erect an antimony smelter in Texas and smelt ore from their Mexican mines.

Mr. CROWTHER. If they employed American labor, I would not be disturbed about that, because I welcome even a gesture on the part of any of the gentlemen from Texas in favor of the protective-tariff policy. The Democratic Party made a strong declaration last year regarding the protective tariff. One hundred and eighteen of you gentlemen answered the telegram that was sent out by Mr. Raskob, and there has never been but one man who had the intestinal fortitude to stand on the floor here and say that he did answer the telegram and that he agreed with that policy.

Twenty-four of the distinguished Members at the other end of the Capitol answered that telegram, and you declared to the people of this country that business no longer had anything to fear from the Democratic Party, that you were protectionists, and that the measure of duty and its allocation should be in relation to the difference in the cost of production between this and foreign countries. What better statement could you have made indicative of your new faith to the American people? Now it develops that it was mere lip service, that you did not intend to do anything along that line at all. Where are all the pseudo-protectionists of Democratic faith who shouted so loudly for protective tariff during the last presidential campaign? Where are the 90 per cent of the Democratic candidates for Congress, who John J. Raskob claimed had answered his telegram affirmatively in behalf of a protective tariff? Where are the Democrats who subscribed to their party platform, which declared that tariff rates should equal the difference in production costs between the United States and foreign countries? Echo answers "Where?"

HOPE OF SUCCESS

Evidently their declaration of a new-found faith was merely for political purposes and in hope of success at the polls. Out of all that shouting and declaration there has emerged not a new group of Democratic protectionists but a straggling band of sharpshooters, sniping from the old Democratic ambush labeled "Tariff for revenue only." The citizens of these United States were right in their conclusions that our Democratic brethren were not converted by either Mr. Smith's declaration or Mr. Raskob's telegram.

The indications are very clear in that respect at the other end of the Capitol, and we find this coalition of pseudo-Republicans lined up with the Democrats for the purpose of defeating and hamstringing at every opportunity the policy of a protective tariff.

The gentleman from Texas [Mr. GARNER] says with ardent emotion that if we would let him write the bill and let him take out the flexible clause, and if we would let him take out something else and put in something else, he would vote for the bill. Always, you will observe, there is a big "if" in the promise as to the gentleman's action. We had twenty-odd Democrats who supported the bill when it left the House, and I congratulate them in having the courage of their convictions and in endeavoring to help put into force the tariff platform their party ran on in 1928.

Now, this flexible clause is a most necessary factor. The gentleman says we are yielding our constitutional authority when we allow this change of rates to be made by the President. That very question was passed upon by the Supreme Court of

the United States, and I think the decisions of the Supreme Court of the United States are still regarded with a considerable degree of favor by the average citizenry of this country of ours. [Applause.] What harm has been done heretofore by the President in increasing agricultural rates on the recommendations of the Tariff Commission? They have proved beneficial to agriculture; every one of them has proved beneficial to agriculture. The flexible clause has a stabilizing influence that will take care of business in this country of ours in the intervals between formal revisions of the tariff.

There has been much misinformation spread abroad in the discussion of the tariff. The pages of the CONGRESSIONAL RECORD have been filled with most extraordinary statements concerning the cost of the tariff to the consumer under the proposed bill. Those figures have no basis in logic or truth. The independent oil producers asked for a dollar a barrel tariff on the 109,000,000 of barrels of oil brought into this country from foreign countries, and a distinguished Senator said that that would cost the people of the United States \$900,000,000.

This is the method used by the so-called Fair Trade League, which should be called the Free Trade League. The duty asked on oil was \$1 per barrel, and the importations are 109,000,000 barrels. The domestic production is 900,000,000 barrels, so they add \$1 per barrel to the domestic production and "presto," the result is according to this method of figuring that the cost to the consumers will be \$900,000,000. This sort of arithmetical gymnastics is about the sort of thing you would expect to find in the tax return of the Fresh Air Taxicab Co. Incorporated, as submitted by Amos 'n' Andy.

There has not been presented the slightest evidence that any rate in the Fordney-McCumber tariff bill during its eight years of service has added a penny to the consumer's cost of any commodity covered by the schedules in that bill. On the other hand, we have many items carrying duties under the act of 1922 where there has been an actual decrease in cost to the consumer.

Mr. RANKIN. Mr. Speaker, will the gentleman yield?

Mr. CROWTHER. Yes.

Mr. RANKIN. The gentleman says that the flexible tariff is to increase the selling price of commodities in this country?

Mr. CROWTHER. I did not say that.

Mr. RANKIN. Then I misunderstood the gentleman.

Mr. CROWTHER. I am sure the gentleman from Mississippi does not desire to misquote me.

Mr. RANKIN rose.

Mr. SANDLIN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. SANDLIN. Is it not a fact that under the special order the gentleman from Louisiana [Mr. MONTET] is to have 20 minutes?

The SPEAKER pro tempore. Yes.

PERMISSION TO ADDRESS THE HOUSE

Mr. RANKIN. Mr. Speaker, I ask unanimous consent to proceed for 10 minutes.

Mr. SNELL. Mr. Speaker, I shall have to object to any more requests to speak.

Mr. RAMSEYER rose.

The SPEAKER pro tempore. For what purpose does the gentleman from Iowa rise?

Mr. RAMSEYER. I rise to ask unanimous consent for time, not to-day, but later, in which to discuss a paper that I prepared last fall while I was waiting for the House to reconvene; a paper to which I devoted considerable research and study, on the subject The Politics of Tariff Making. It is a study of tariff making over the last 55 years.

I have listened to the speeches on the tariff this morning and I want the Members of the House to know that I was distressed at the hilarity which at times was manifested here in the discussion of the most serious and profound problem that is before this Congress. So far as I am concerned the tariff bill is not going to be laughed into conference or laughed through conference.

In this paper on The Politics of Tariff Making I discuss some practices which to my mind have retarded rational and scientific tariff making. Part of the discussion is on the origin of and responsibility for the practice of excluding minority members of the Ways and Means Committee from participation in writing tariff bills.

The SPEAKER pro tempore. The gentleman will please state his request.

Mr. RAMSEYER. Well, for the purpose of discussing what is in the paper I have referred to, I ask unanimous consent that, on Saturday, after the reading of the Journal and the disposition of matters on the Speaker's table, I may have one hour.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent that, on Saturday, after the reading of the Journal and the disposal of matters on the Speaker's table, he may address the House for one hour. Is there objection?

Mr. SNELL. I suggest to the gentleman that opportunity will be given in general debate.

Mr. MAPES. Reserving the right to object, Mr. Speaker, I do not like to object to the request of the gentleman from Iowa, but it seems to me that until the legislation now pending before the House is completed we ought not to grant any more unanimous-consent requests for time. It may be that the pending legislation will be through by Saturday. That may be possible. And it may be that it will not. I suggest that the gentleman ask for time later.

Mr. RAMSEYER. I would like to have a definite and certain time. We have taken two hours this morning in the discussion of the tariff. The gentleman from New York [Mr. CROWTHER] in his speech indulged in reflections on the tariff views of the Northwest.

Mr. MAPES. If the gentleman will amend his request to some time next week, I will not object.

Mr. RAMSEYER. Very well; then I will amend my request and ask unanimous consent to address the House on Monday next.

The SPEAKER pro tempore. The request of the gentleman is modified to ask unanimous consent to address the House for one hour on Monday next. Is there objection?

There was no objection.

ADDRESS OF HON. JAMES G. STRONG OF KANSAS

Mr. COLE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein an address on farm relief made by Hon. JAMES G. STRONG over the radio.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa [Mr. COLE]?

There was no objection.

Mr. COLE. Mr. Speaker, under leave to extend my remarks in the RECORD, I include an address delivered by Hon. JAMES G. STRONG of Kansas on A Square Deal for Agriculture, delivered over the National Broadcasting hook-up, Wednesday, March 19, 1930.

The address is as follows:

A SQUARE DEAL FOR AGRICULTURE

The unfair treatment given the farmers that produce the food of the Nation, before, during, and after the World War, brought disaster to the agricultural industry which for nine years the Government has been trying to overcome and correct.

I will refer to these wrongs briefly:

First, the Underwood tariff bill of 1913, passed under the Wilson administration, placed farm products upon the free list. The seriousness of this wrong to agriculture did not become fully apparent until after the World War for the reason that the starting of war in Europe in 1914 brought war prices and prevented the shipment of agricultural products into this country, and delayed until the war was over the flooding of our markets with such products from other countries.

Second, by Governmental action during the war a limitation was placed upon prices of food products, which prevented farmers receiving the full benefit of war prices, while they had to pay highly inflated prices for everything they purchased from other industries, on which no price limitations were set.

Third, during the war Government representatives appealed to the patriotism of the farmers and urged them to increase their production in order that not only our Nation, with the 4,000,000 men that had been called to the "colors," would have an ample supply of food, but that our allies might also be properly fed. The farmers were told that while our young men could fight and win battles, food would eventually win the war. This caused the farmers to broaden and extend their activities and increase their production, forcing them to extend their credit in order to do so.

When the war came suddenly to an end they were in debt. Soon their loans were called and they were forced to sacrifice their grain and stock upon a deflated market.

Fourth. After the war this Nation had the only cash market in the world and food products of other nations were shipped here, duty free. Butter from Norway, Denmark, and Sweden supplied the cities on our eastern coast; eggs by the shipload from China came in through our western harbors; wheat, milk, cream, cheese, chickens, and turkeys were shipped in from Canada; sheep and wool from Australia; corn and cattle from Argentina; our markets were flooded with such products and agriculture was in distress.

Fifth. In 1920 came the deflation which caused a million farmers to lose their farms and the entire industry was prostrated.

I realize that other industries also suffered from the deflation that followed the war, but they were better organized and through trade

agreements and credit they were able to secure from money centers, did not suffer in comparison with agriculture.

These unfair conditions that I have mentioned so demoralized agriculture that Congress has sought by legislation to repair the wrong that had been done and to restore prosperity to this great industry.

In 1920 the farmers' emergency tariff bill, restoring tariff protection to agricultural products was passed by Congress but was vetoed by President Wilson.

In 1921 the same tariff relief for agriculture was again passed by Congress and was signed by President Harding.

The Federal farm loan system was improved and broadened to enable the farmers to secure loans upon their lands at reasonable rates of interest.

The 12 intermediate credit banks were established in order that short-time loans of 1 to 3 years could be made on agricultural products.

In all, over 30 laws have been passed to try to restore agriculture as a profitable industry, but though agricultural prices and conditions were greatly improved, agriculture, through being compelled to pay high prices for its needs, while farm products did not bring a fair return, failed to regain that prosperity which other industries enjoyed.

The hardest problem to solve has been that of maintaining compensatory prices on agricultural products produced in excess of American consumption, which had to be sold on the world market and through improper marketing forced down the American price below the cost of production.

Various plans were proposed, one being the buying up of such surplus by a Government agency and selling the same upon a world market while maintaining a higher and compensatory price in this country. An amount was to be deducted from the price paid every producer in proportion to the amount of the product produced in order to create a fund to equal the loss between the American price, and that proportion of the product sold on the world market. This proposal was carried in a bill introduced in the Sixty-ninth Congress.

In the Seventieth Congress it was greatly improved and the amount to be collected from the producer became known as the equalization fee. It was a plan whereby the Government was to enforce cooperative marketing by the producers, collecting the equalization fee on all products so marketed. There was much dispute as to whether or not such a plan could be enforced under our Constitution, and constitutional lawyers were divided in their opinion, many holding that our Constitution would not permit the Government to force American producers to pay this fee. Other provisions of this proposed legislation were similar to the present law passed during the special session of this Congress. I, with a majority of the Members of the House and Senate, voted for such legislation, but it was vetoed by President Coolidge.

A plan to pay to exporters of agricultural products an amount equal to one-half of the tariff was also suggested. Objections were made, many holding that other nations would levy an import tax equal to the amount so paid our exporters, which would result in transferring the amount so paid from our Treasury to that of foreign governments without helping our producers; some claimed that the amount paid the exporters would not be passed back to the producer, while others and a majority of the farm organizations opposed it on the ground that it was a subsidy. This was called the debenture plan, but it has never received sufficient votes to pass both Houses of Congress. It has been placed in the tariff bill by an amendment in the Senate which provides that it may be used only at the option of the Federal Farm Board, but whether it will again come up for a vote in the House can not at this time be determined.

In the campaign of 1928 both parties pledged themselves to legislation that would give further relief and a square deal to agriculture, by making possible the establishment of an American price that would bring a fair return to the farmers of the country.

The Republican Party was fortunate in having a candidate born in the center of the great food-producing States of the Union, one who had inherited from his Quaker parents the character of honesty and the belief that honest toil brought the greatest reward of life. Left an orphan in his youth, he grew up in a rural community with a knowledge of agricultural conditions and worked his way through college in California, becoming an engineer of such ability that he was employed in great projects in Australia, then China, and then Europe, gathering experience in world affairs.

When President Wilson desired a food administrator for the United States, on our entering the war, he was selected for such position. President Harding appointed him as Secretary of Commerce, to which position he was reappointed by President Coolidge. This department of our Government he so developed and improved as to enable the upbuilding of our export trade throughout the world. His statement that he would devote himself to the relief of agriculture was followed by the statement that, if elected, he would call the Congress together in special session for such purpose.

He was elected by the greatest majority ever given any President, and when he entered the White House it was generally acknowledged that he was the best equipped American who had ever been elected to the Presidency.

The month following his inauguration, he carried out his promise and called Congress in special session. The opening words of his message were, "I have called this special session of Congress to redeem two pledges given in the last election—farm relief and limited changes in the tariff."

The Committee on Agriculture of the House promptly reported a bill creating the Federal Farm Board, and giving it broad powers to create farmer owned and farmer controlled marketing associations, and stabilizing organizations to be financed by \$500,000,000 from the Government Treasury. This bill was promptly passed by the House and Senate and signed by President Hoover, and it has been truly said that no government in the history of the world ever endeavored to serve any industry to the extent of this legislation for agriculture.

A tariff bill was reported out of the Ways and Means Committee of the House that has brought much criticism. Unfortunately, it went far afield from that suggested by the President, for in addition to complying with his suggestion of "limited changes in the tariff," intending to increase import duties on agricultural products and the products of those industries that were in distress, it sought to increase import duties on a large number of industrial products that were not in distress.

Had industry been willing to accept the suggestion of the President and had urged their representatives in Congress to have passed a tariff bill for the relief of agriculture, as was done in 1921, months of debate and contest would have been avoided. The tariff bill would have been passed during the special session, and in this regular session the further needs of industry would have been cared for, as was done in 1922.

Much criticism has been made throughout the Nation because of the fact that the tariff bill was passed through the House subject only to amendment by the Ways and Means Committee, which has been the manner in which tariff bills have been passed through the House by both political parties, but it must be remembered that in the House the representatives of industrial States outnumber and hence outvote those of agricultural States. The representatives of agricultural districts who had appeared before the Ways and Means Committee in the drafting of the bill, made a successful fight for increased rates upon agricultural products, but had to trust to the Senate, where agricultural States have the same number of votes as industrial States, to reduce the rates that had been placed on the industrial products that were in excess of the President's recommendation.

I voted for the bill, as we were forced to consider it, with the great majority of the representatives of agricultural districts, because the study I had made of the measure convinced me that its greatly increased rates for agriculture were the best ever carried in any tariff legislation. I know that percentages of increases in the rates given industry have been used to make it appear that they exceeded those given agriculture, but it must be remembered that our agricultural products are sold by the farmers of the Nation every year, while most all the articles they require of industry are purchased only from 5 to 20 years; for instance, agricultural machinery lasts the farmer for a period of from 5 to 10 years, and building materials from 10 to 20 years or more. The increased rates must be divided by such number of years.

To satisfy myself I took the bill and turned through it page by page, charging the dairy and stock farm of 320 acres that I own and operate in Kansas, and on which there are five people, with all of the tariff increases on the materials I must buy each year from industry and then went through the bill again and gave my farm credit for only half of the tariff increases of the products I produce and market annually, and I found that the benefits that would accrue to my farm would outweigh those I would have to pay over 11 to 1.

When the bill went to the Senate its Finance Committee took two months to consider and amend the bill and for six months it has now been considered upon the floor of the Senate where it was subject to amendment. A number of industrial rates have been reduced and some of the agricultural rates increased. When the bill is passed by the Senate it will go to the conferees of the two Houses, consisting of six Republicans and four Democrats from the following States: Oregon, Massachusetts, New Jersey, Texas, Mississippi, Utah, Indiana, Pennsylvania, California, and Mississippi, who have served in Congress from 8 to 29 years. These men have helped to prepare many tariff bills and are the best experts in the Nation on this subject, and I believe that when they have agreed upon the bill it will be one of the best that the Nation has ever had. I am quite willing to admit that it will contain rates that can be pointed out as objectionable to both agriculture and industry and if I had the right to make changes I would increase a number of agricultural rates and reduce a number on industrial products, but it will contain the best rates for agriculture ever passed by any Congress, and I believe that on the whole it will bring increased prosperity to agriculture and our entire Nation.

I realize that there will be much criticism of the attempt of the Federal Farm Board to build up for agriculture marketing organizations with the purpose of securing better prices for the farmers of the Nation. Already the grain exchanges in the large cities have sent out much propaganda against both the legislation and the board's activities under the same. This was to be expected since that portion of farm products marketed by farmers cooperative marketing associa-

tions will deprive them of some commissions but it should be remembered that the farmers of the Nation have in the past labored under the greatest handicap ever endured by any industry. While they have been proficient in production they have had no control over the sale of their products. No other industry could exist under such conditions. The hope of agriculture lies in correcting this wrong.

Undoubtedly the market has recently been manipulated to embarrass the Farm Board and if the farmers are asked to reduce the acreage they plant to wheat, and plant other products, such advice will be used to spread dissatisfaction. But I believe the farmers of the country will not be misled and others ought not to be, for the President in his message last April stated, "The pledged purpose of such a Federal Farm Board is the reorganization of the marketing system on sounder and more stable and more economic lines." I congratulate the farm organization on their loyal support of the Farm Board.

It was the intention that the Federal Farm Board was to make it possible for those engaged in agriculture to organize and operate farm associations that will market their products, or such portion thereof as may be necessary, in an orderly manner and, through cooperation with the Federal Farm Board, have some voice in the price for which their products may be sold. These organizations are to be financed at low rates of interest, the same as the organizations of industry secure. We have already appropriated \$150,000,000 of the \$500,000,000 authorized in the farm bill, and under the recommendation of President Hoover we will soon appropriate \$100,000,000 more, and if necessary the balance of the \$500,000,000. And let me say to industry that if agriculture can be brought to a prosperous condition, where it may earn a fair return, its buying power will be so increased that industry will profit and the whole Nation be amply repaid.

Mistakes may and undoubtedly will be made by the Federal Farm Board; some rates in the tariff bill will be unsatisfactory; much of propaganda and politics will be indulged in; the stock-market crash, the stagnation of the winter months, the delayed uncertainties of the tariff bill have all caused temporary unemployment that will be charged against the effort of Congress to give a square deal to agriculture and all industry.

But it must be considered that we are a Nation covering a continent; our people are engaged in the production and manufacture and transportation of products that are in conflict one with another; but we must be charitable and just and follow the command of the Master, "to do unto others as we would have others do unto us," if our Nation as a whole is to prosper, remembering that in spite of all the mistakes and errors that may be pointed out in the conduct of our Government, that, nevertheless, we are as a whole the best fed, the best housed, the best clothed, and the best entertained people that ever existed upon the earth.

I am not discouraged. I believe that all the legislation and efforts of the past nine years will bring to agriculture a square deal, to which it is entitled, and that it will again become a profitable industry. I believe without doubt that when the tariff bill is passed that industry will revive and unemployment cease.

Let us all do our part.

COMPLETE EQUALITY OF CITIZENSHIP SHOULD BE THE LAW OF THE LAND

Mr. CABLE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD to include a radio speech that I gave last night on the subject of woman citizenship.

The SPEAKER pro tempore. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD to include a speech made over the radio on the subject of woman citizenship. Is there objection?

There was no objection.

The speech is as follows:

Each Member of the House of Representatives recently received a letter from an attorney whose alien client was not permitted to enter the United States because she was not able to pass the tests of the 1917 immigration act. Seeking to amend the women's citizenship law, so that his client could be admitted, the attorney wrote:

"Neither Congress nor the American people have a full sense of the import of the act of 1922, which was invoked by the legal arm of the Government."

It was the immigration law, and not the 1922 act granting independent citizenship to women, that prevented his client from coming to this country. If that attorney had known of the discussions and consideration of the unjust discriminations in our citizenship laws affecting women, which brought about the 1922 act, he would not have so circularized Congress.

In 1907 Congress had passed an expatriation act providing, in part, that any American woman who married a foreigner should take the nationality of her husband and cease to be an American citizen. If the laws of her husband's country did not vest her with his nationality, she became a woman without a country. No consideration was given her wish or desire in regard to nationality. She was

automatically deprived of the right of protection by the United States while she travelled or lived outside of this country. She lost all right of suffrage, of holding office, either by election or appointment, the right to participate in governmental affairs and, in many States, she lost the right to hold or inherit property, to teach in the public schools, practice a profession, or to carry on many of the other vocations of life.

The reverse was not true—the native-born man who married an alien, even though he went to live in the country of his wife, did not have his citizenship status taken from him. Then, too, the alien woman whose husband was naturalized, or the alien woman who married an American, automatically acquired that which the native born lost—American citizenship—without regard to her wish or qualification.

The battle for equal citizenship rights began many years ago. Jeanette Rankin, the first woman Member of Congress; John Jacob Rogers, a Representative from Massachusetts; and others introduced bills to abolish the unjust discriminations existing under the 1907 act. Inasmuch as Congress failed to legislate on these bills, the women of the country appeared, represented by their leaders, before the national conventions of the Republican and Democratic Parties in 1920 and secured the adoption of a pledge, which was included in the platforms of both parties and which reads as follows:

"We advocate, in addition, the independent naturalization of women. An American woman resident in the United States should not lose her citizenship by marriage to an alien."

Backed by this pledge of the major parties and indorsed by such national women's organizations as the American Association of University Women, National Federation of Business and Professional Women, Council of Jewish Women, General Federation of Women's Clubs, National League of Women Voters, National Woman's Party, National Trade Union League, and the Woman's Christian Temperance Union, Congress desiring to give the citizenship status of American women the dignity and individuality of that of American men passed the bill granting independent citizenship rights to women.

That bill was signed by President Harding on September 22, 1922, and is commonly known as the Cable Act of that date.

Independent citizenship rights for women, expressed in the 1922 act, was not a new idea in the United States. Prior to the 1907 law, even though an American woman married an alien, if she continued to live in the United States, she did not cease to be an American citizen. So held Charles Evans Hughes when he was Secretary of State. Likewise not until 1855 did the marriage of an alien woman to an American make her a citizen of this country. Before the enactment of these laws marriage alone did not affect a woman's nationality, so far as the United States was concerned.

Thus, the attorney mentioned clearly is in error in his statement, for both Congress and the American people fully realized the import of the women's citizenship act of 1922, and fully contemplated the results of the operation of that act.

That law provides, in part, that a woman citizen shall not cease to be a United States citizen by reason of her marriage after the passage of the act, unless she make a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens. On the other hand, any woman who has married a citizen of the United States, or whose husband has been naturalized, since the passage of the 1922 act, has not acquired United States citizenship by reason of her marriage or her husband's naturalization. This citizenship law is a step in the right direction, but it does not grant complete independent citizenship rights to women, and there should be some perfecting amendments.

For example, the law now requires one year's permanent residence in the United States before a native-born woman, who has lost her citizenship because of her marriage to an alien, can regain her American status. Why should the woman who may have married a day before September 22, 1922, be placed at a great disadvantage, a disadvantage which is not suffered by the woman who happened to marry the day after the act became effective, and thereby retained her United States citizenship?

Take the case of Mrs. Emily Martin. She married an alien before the 1922 act was effective, and her American citizenship was automatically taken from her. Later she returned to this country, resided here a year, and then, because she told the court she might reside outside the United States with her husband and children, the court found her residence here was not permanent, as required by law, but was temporary, and the court denied her the right to regain United States citizenship.

I have introduced a bill, H. R. 10208, now pending before the Committee on Immigration and Naturalization, to permit any woman who lost her citizenship by reason of her marriage to an alien before the 1922 act, to go before a court and regain that citizenship, irrespective of the character of her residence in the United States. It could be either temporary or permanent, and a day's residence would be sufficient.

That bill, if enacted into law, also would repeal the provision requiring a woman who has lost her citizenship to go through regular

naturalization proceedings. Mrs. RUTH BRYAN OWEN, for example, married a British officer before 1922, and lost her American citizenship through no fault or desire of her own.

After the war, she returned to this country with her husband, and was required to submit to the same naturalization proceedings to regain her American citizenship in a Florida court, as one who had never been a citizen of the United States. This is not a just requirement of a native-born woman who had her citizenship taken away by the provisions of the 1907 act. A simple affirmative act should be sufficient to regain the citizenship lost by a native-born woman because of her marriage.

There are women whose American citizenship was lost by marriage prior to the 1922 act, who can not now return to the United States to regain their former nationality because of our immigration quota law. Since a woman in this situation is counted in the quota of her husband's country, if the quota allotted to his nationality is exhausted, she can not return to the United States to be repatriated. To come here temporarily as a visitor will be of no benefit, as the law now requires her residence to be of a permanent character, before she can regain American nationality. The permanent-residence requirement in the cases of such women should be repealed, and our immigration laws should be amended to permit her to be admitted without regard to the quota.

The present law provides that an American girl who marries an alien ineligible for citizenship shall become ineligible also. She becomes a woman without a country. An ineligible alien usually means one of the yellow race. No such law applies to the American man. If he marries an alien ineligible for citizenship he continues to be an American citizen. Why should there be one rule for the man and another for the woman? Both are American citizens.

H. R. 10208 would eliminate this unjust discrimination.

If a native-born man marries an alien and resides abroad in her country the remainder of his life he does not cease to be an American citizen. Their children, although they are born abroad and never come to the United States, likewise are American citizens. But if a native-born woman marries an alien and resides two years in his country, or five years elsewhere abroad, she is presumed to have ceased to be an American citizen. Again I ask, why should there be one rule of law for men and another for women?

Complete equality in citizenship should be the law of this land. There is no reason for distinctions between men and women in the nationality laws of the United States. A native-born woman has the same loyalties and should have the same rights to nationality as a man. She should have, as the man has, the right to select the country of her choice.

In view of the great alien population in this country and the resulting marriage between alien men and American women, on the one hand, and between American men and alien women on the other, the question of nationality rights is of peculiar significance. The status of these women depends not only upon the laws of this country, but also upon the nationality laws of many other countries. To abolish all distinctions between the sexes, the question of nationality must be dealt with internationally by means of treaties.

The conference for the codification of international law, now in session at The Hague, was called only after it was determined that certain subjects were ripe for consideration. The conference will discuss and undertake to codify the law on three important subjects: Nationality, territorial waters, and the responsibility of States for damage done to the persons or property of foreigners within their territory.

Nationality includes that of greatest importance—citizenship of women.

More than 50 countries have sent delegates to this conference at The Hague. One is Mrs. Ruth B. Shipley, Chief of the Passport Division in the Department of State, and a technical advisor is Dr. Emma Wold, of the National Woman's Party.

I hope our delegates will bring back a treaty providing, in substance, that there shall be no distinction based on sex in regard to the law on nationality. We should bear in mind, however, that this subject involves the laws of many countries, is of the greatest magnitude, and that on it there is the greatest divergence of opinions.

There are only five nations dealing equally with men and women in the effect of marriage on nationality. In 81 countries a man's marriage has no effect whatever on his nationality; while on the other hand, in the entire world there are but nine countries in which marriage does not change a woman's nationality without her consent. In the nationality laws of the world, six different systems are found to prevail in regard to the effect of marriage on a woman's nationality. In 28 countries the wife is compelled under all circumstances to lose her nationality and take that of her husband, while his is not changed by marriage.

In two countries, Andorra and Japan, the husband is compelled, under certain circumstances, to take the nationality of his wife. These various laws have resulted in situations wherein the woman who marries a man of foreign nationality may find herself a woman with two

countries, or of dual nationality, and subject to the tax and other laws of both countries.

On the other hand, some women who lose their nationality under their own laws, because of marriage, and who do not acquire the nationality of their husbands, find themselves stateless and without the right of protection, passport, and many other conveniences. They are women without a country.

These facts show the stupendous task that confronts the delegates at The Hague in their attempt to harmonize the nationality laws of more than 80 different countries.

By adopting the 1922 act, the United States made known to the world that the nationality of its women should not be made an incident of marriage. Our Nation can not, through its delegates at The Hague, take a backward step; the other nations must go forward.

If sufficient progress is not made at The Hague in the matter of reaching some agreement tending toward equal citizenship rights for women, I will press for passage my resolution requesting President Hoover to call a conference of representatives of all governments of the world to meet at Washington, D. C., to consider and adopt a convention on the nationality of women, which will pronounce for all nations the principle that a woman should have the same right to independent nationality as a man.

To the leaders of the great women's organizations I have mentioned, is due the credit for the 1922 act. Their faith and confidence in the principle of equal citizenship rights, expressed in that law, have been vindicated. The law has stood the test; it has justified itself.

Let Congress again accept the wisdom of these women, by enacting perfecting amendments to the act of 1922. Then will the law stand as a model to be copied by the delegates at The Hague. Let us hope that when our delegates return they will bring back with them an agreement embodying the principle that a woman should enjoy the same nationality rights as a man.

FARM RELIEF

The SPEAKER pro tempore. Under the special order of the House the gentleman from Louisiana [Mr. MONTET] is recognized for 20 minutes.

Mr. MONTET. Mr. Speaker, the question of farm relief addresses itself to us with ever-increasing intensity.

These remarks are not only addressed in the interest of farm relief, but also as a suggestion for the improvement of the general health and, if heeded, to give added enjoyment to the American dinner table.

The general use that can be made of most edible farm products is already well known. The consuming public more or less understands the various methods and recipes satisfactorily used in the preparation of wheat, oats, barley, rye, corn, and their products, but there is one splendid food article grown in great quantities in this country with which, generally speaking, the American public is not familiar as to the best methods of its preparation for table use. If the public were as well versed in the proper cooking of this food as are those in the locality where most of this crop is grown, there would be little or no surplus demanding the attention of the Federal Farm Board, as it is one of the most delicious, sustaining foods grown on American soil. Properly prepared, its daily use not only improves the general health but also tends to reduce the cost of living. It is a cheap food article, and when the housewife learns of its deliciousness through proper cooking, it will become a popular dish in all American homes. This food is none other than rice.

This country produces some 40,000,000 bushels of rice annually. In 1929 continental United States produced 40,217,000 bushels, and of this Louisiana produced 19,352,000 bushels. For some years Louisiana has annually produced over 40 per cent of the rice grown in this country. The people of that State are by far the largest per capita consumers of rice in the United States, all because one finds there methods for its cooking that make it a most delicious food, enjoyed by all and denied to none.

When one leaves that section of this great country and finds rice on the dinner table it is usually served in broths, soups, and custards with a smatter of raisins and other mixtures whereby the real deliciousness of the food does not prevail. While rice is served daily on the tables of practically all Louisianians, its delightfulness is never overshadowed by a predominance of raisins, nutmeg, or milk. It is prepared in the manner hereafter explained, served with every dinner, brought to you in a large dish, and eaten with chicken, beef, ham, or other gravies and vegetables.

Louisiana is known for its cooking, and no Louisiana meal is ever complete without delicious rice and gravy, and besides it adds a dish which is not costly by any means. As a satisfactory, wholesome, and sustaining food, rice has no substitute when properly prepared. When the American housewife is out of Irish potatoes or even bread, if she will serve a dish of this

rice I am satisfied that she will find it a desirable substitute and thereafter serve it along with her Irish potatoes, and so forth, upon which to spread her tasty gravies.

The preparation and cooking of rice to serve with gravies is not an intricate performance requiring any particular culinary talent.

Wash one cup of rice thoroughly. Wash the rice in at least four or five waters or until thoroughly cleansed. Bring two cups of water to a boil. Add one teaspoon of salt. Then add the rice to boiling water gradually so as not to stop the boiling. Let boil for four minutes. Then cover the pot and cook very very slowly for 20 or 30 minutes. Remove it from the fire, let stand for five minutes, and when served every grain will be separate. If a double boiler is used, the rice will be whiter and drier but will take longer to cook. If the rice is fresh, slow cooking for 20 minutes will be sufficient, but it is always very simple to determine when the rice is cooked by rolling two or three grains between the fingers. If the grains are soft and not gritty the rice is cooked.

In the absence of gravy, it is also very delicious if butter is spread thereon.

This is the famous Louisiana recipe for cooking rice. It is well known that the Louisiana housewife has made cooking an art. She has discovered that rice with its perfect blending quality makes meals more delicious as well as more nutritious and more easily digested.

Let me add here two or three other recipes which are very popular in New Orleans and throughout Louisiana, and which, as you know, is the home of famous Creole cooking.

Let the American wife enjoy Creole rice, which is prepared as follows:

One and one-half cups rice, 3 cups water, 1 teaspoon salt, 2 tablespoons bacon fat, 5 slices bacon (or as much fat ham), $\frac{1}{2}$ cup chopped onions, 2 cloves, garlic (if desired), 3 fresh tomatoes (or one No. 1 can tomatoes), 2 green peppers, minced.

Boil rice for 15 minutes.

Fry bacon or ham crisp brown, chop into rice. Fry onions, garlic, and green peppers in bacon fat; add tomatoes. Cook five minutes; add seasonings, then add to the rice. Mix well, cover, and cook slowly for 20 minutes. Garnish with parsley and two or three crisp brown slices of bacon.

Note: Left-over chicken, turkey, or roast may be used instead of bacon or ham.

On some other occasion try the rice tamale which is prepared as follows:

One cup cooked rice, 6 to 8 outside leaves of cabbage, 8 toothpicks, 1 cup ground meat, one-third cup chopped onions, one-half teaspoon cayenne pepper, 1 No. 2 can tomatoes, one-half teaspoon salt, 2 tablespoons bacon grease.

Pour boiling water over the cabbage leaves. Let stand five minutes. Remove from water and drain. Mix the rice, onion, meat, pepper, and salt. Fill each cabbage leaf with part of the mixture. Roll the leaf and fasten with toothpicks. Place in a baking dish, and pour over them the can of tomatoes and the grease. Bake 20 minutes.

And for those who like myself enjoy the popular dish known as red beans and rice, try the following:

One cup raw rice; 1 pound red beans, soaked over night; one-half pound salt meat cut in strips, one for each serving; 1 onion, leave whole so it can be removed after cooking if preferred. Seasoning to taste.

Cook beans, salt meat, onion, and seasoning together with enough water to cover well, until beans are cooked so well that they fall to pieces. Add enough water from time to time so that there will be plenty of thick rich gravy. Serve with the cooked rice.

This is a meal in itself, and is delicious when prepared the "Louisiana way."

And rice vegetable casserole is prepared as follows:

One cup peas, 1 cup corn, 2 tablespoons minced onions, 1 teaspoon salt, 2 cups cooked rice, 2 strips bacon, $1\frac{1}{2}$ cups milk, one-fourth teaspoon pepper.

Place in layers in greased baking dish; when casserole is filled, add milk. Place bacon strips on top and bake until brown.

Those interested in tomatoes may also encourage the further use of tomatoes by suggesting the following for a rich tomato soup:

One cup rice, 1 cup tomatoes, 1 onion, 1 teaspoon salt, one-half teaspoon pepper, 4 cups boiling water, 1 tablespoon butter, 2 tablespoons flour, one-half teaspoon celery salt.

Put rice and sliced onion into boiling water. Cook until tender. Add tomatoes. Press through sieve. Brown the flour in butter and add to the rice mixture. Season with salt, pepper, and celery salt. Serve hot with croutons. Garnish with chopped parsley.

The kiddies can also come in for their share of enjoyment by serving them a supper of boiled rice, cream, and a bit of sugar. The light, fluffy grains are easily and quickly digested. All children will love their rice and you may rest assured it will not disturb their slumber.

I could give a number of other recipes, but the foregoing are most enjoyed by both rich and poor in the land of the famous Creole cooking.

Mr. LANKFORD of Georgia. Does the gentleman think there is any better way of cooking rice than that used in the State of Georgia, merely cooking the chicken and rice together?

Mr. MONTET. I have such a recipe here.

Mr. LANKFORD of Georgia. If the gentleman has any improvement on the plan we have in south Georgia, I would like to see it.

Mr. MONTET. I have here a recipe which provides for that method of cooking.

Mr. GLOVER. Will the gentleman yield?

Mr. MONTET. I yield.

Mr. GLOVER. I am very much interested in the gentleman's discussion of rice, because the great rice fields of Arkansas are in my district. And, while the gentleman has recipes for cooking it, I do not think the Louisianians can cook it like they can in Arkansas.

Mr. MONTET. Of course, we Louisianians do not agree with the gentleman.

Mr. GLOVER. What I would like to ask the gentleman is if the rice people of Louisiana have made a study of how they can use the by-product, so called, the rice straw, as provided for in this last bill? Provision was made there, I understand, for a board to make a careful study of the various uses to which the by-products of farm growth may be put.

Mr. MONTET. In answer to the question of the gentleman, we have in Louisiana some mills which are manufacturing paper in great quantity out of rice straw. Experiments are now being carried on to discover further and different uses for rice straw.

Mr. GLOVER. I am very much interested in that. There was recently a statement made by a secretary of a chamber of commerce in the rice belt of my State, which states that 100,000 tons of rice straw is going to waste in that small territory that could be used in the manufacture of paper.

Mr. MONTET. A great deal of rice straw goes to waste in the State of Louisiana also. However, a satisfactory method of making paper has been discovered. Other experiments are being made in order to consume the remainder of the rice straw now going to waste.

Mr. LINTHICUM. Will the gentleman yield?

Mr. MONTET. I yield.

Mr. LINTHICUM. Coming from the gastronomical center of the universe I should like to ask the gentleman from Louisiana if he thinks rice would take the place of nice Maryland fried chicken with green corn cakes around it? Does the gentleman think there is anything equal to that?

Mr. MONTET. The gentleman's dish would be wonderful if he only added rice, cooked in the Louisiana way.

Mr. O'CONNOR of Louisiana. Did I understand the gentleman from Maryland to state that Baltimore was the gastronomical center of the universe instead of New Orleans?

Mr. MONTET. I believe my original remarks will show where that center is. Everybody knows it is New Orleans and Louisiana.

Rice is a cheap food. Its cost is very little, its nutritive value is undeniable, and if the thousands in whose homes these recipes find their way will avail themselves thereof, I not only look for the definite settlement of the rice growers' surplus crop troubles but rice will become an article to be found on the American table daily, much to the delight of those partaking thereof and the improvement of their health. [Applause.]

TAX REFUND

The SPEAKER pro tempore (Mr. HOOPER). Under the special order of the House, the gentleman from Oregon [Mr. HAWLEY] is recognized for 30 minutes.

Mr. HAWLEY. Mr. Speaker, I appreciate the courtesy of the House in according me an opportunity to discuss the refund to the United States Steel Corporation for the years 1918, 1919, and 1920 in particular, and the subject of tax refunds in general.

The gentleman from New Jersey [Mr. BACHARACH] addressed the House Tuesday in an excellent statement, and I will endeavor not to traverse the matters he presented.

The gentleman from Texas has twice spoken to the House on the subject, and with his presentation both myself and the facts are in general disagreement.

The refund to the United States Steel Corporation for the year 1917 case was disposed of a year ago, and in a manner eminently satisfactory. The pending case involves the years 1918, 1919, and 1920. For these three years the United States Steel Corporation filed returns showing a taxable net income in excess of \$823,000,000. On this return, they paid a total tax for the three years of approximately \$304,000,000.

The soundness of the present settlement can be easily illustrated by comparing the original taxes paid with the tax liability as determined in the final settlement. As I have stated, the original taxes paid were approximately \$304,000,000. The final determination shows a tax liability in excess of \$312,000,000. In other words, the final settlement increases the tax liability for the three years by more than \$8,000,000.

The final settlement may also be considered from this point of view: A suit is now pending in which the taxpayer claims a return of approximately \$130,000,000 for the three years, including interest. This suit is being settled by a refund of about \$33,000,000, including interest—approximately one-fourth of the amount claimed.

Using the four years, 1917, 1918, 1919, and 1920, as a basis, the original tax liabilities total \$503,000,000. The final tax liabilities total \$485,000,000, showing a net reduction in tax of about \$18,000,000, or less than 4 per cent of the total, notwithstanding the large refund for 1917. In other words, the final settlement is equivalent to a refund of less than \$2,000 on a tax of more than \$50,000.

There are two principal issues involved in the pending case: The determination of the proper amortization allowances, and the computation of consolidated invested capital. Both these issues and others were discussed in detail before the Joint Committee, and I do not believe it is necessary to discuss them now. For the benefit of those, however, who are interested, I am incorporating my remarks in a memorandum discussing the issues in detail and explaining the basis upon which they were settled. I have an earnest desire that the longing of the gentleman from Texas for information be satiated.

Briefly, then, we have this situation with reference to the refunds to the Steel Corporation: The 1917 case was disposed of more than a year ago and is no longer an issue. The pending case has been examined and approved by the Treasury officials; the Treasury decision has been reviewed and examined carefully by the staff of the joint committee and all questions answered; and the case has been explained in detail to the joint committee and ample opportunity has been afforded to every member of the committee to ask for additional information or to raise questions. Mr. Alvord, the special assistant to the Secretary of the Treasury, was present with the committee during its sessions. I believe that practically the entire membership of the House know him and have confidence in his ability and integrity. He has reviewed the entire case and has approved it. In addition, Mr. Alvord explained the important issues in the case and answered all questions to the satisfaction of those present. He was available and ready to answer any further questions which any of the committee cared to ask. He explained in detail to the committee every question raised by the staff in its tentative report and every question raised by any member of the committee. Some of the questions involved in these refunds required an investigation for a preceding period of some 60 years. After the most exhaustive examination we have a proposed settlement as to which no specific criticism has been made by any Member of Congress. No objection has been raised as to any material point in the settlement. Furthermore, it is the opinion of those familiar with the case that the proposed settlement is a very conservative one from the point of view of the Government, and represents a substantially smaller amount than could be recovered if the taxpayer were forced to litigation, giving no consideration to the expenses of the litigation and the intervening interest costs.

I think the following table will present the matter more clearly to the eye:

United States Steel Corporation adjustment of tax for years 1918, 1919, and 1920

A. Original and final tax:	
Tax paid as per original returns.....	\$304, 000, 000
Final total tax collected.....	312, 000, 000
Collection due to Government audit.....	8, 000, 000
B. Additional assessments and refunds:	
Additional assessments for 1918, 1919, and 1920, made in 1926 and 1928, based on tentative and inaccurate determinations.....	29, 000, 000
Refund of principal now made on final determinations.....	21, 000, 000
Balance of additional assessments retained.....	8, 000, 000

When the refund to the United States Steel Corporation for the year 1917 was under consideration by the Joint Committee on Internal Revenue Taxation, all members of this committee were present except one. The Treasury presented the case, and in the course of the discussion said that the principles used in determining the refund for 1917 would be followed in deciding those for the years 1918, 1919, and 1920, unless the joint committee disapproved, and assumed the responsibility for the use of different methods. The Treasury also indicated at the hearing in December, 1928, the approximate amount of refunds to the United States Steel Corporation for the years 1918, 1919, and 1920, which amount was nearly the same as reported for our recent consideration. The gentleman from Texas has had a year's notice of what the Treasury proposed to do.

But during the past year I do not recall that the gentleman from Texas proposed that the joint committee meet to consider any basis for settlement other than those announced by the Treasury.

At the conclusion of the hearing on the 1917 refund the gentleman from Texas was challenged to move that the Treasury's proposal for that year be rejected, and this he refused to do. Nor did he move to reject the settlements proposed by the Treasury for the years 1918, 1919, and 1920, although the chairman made the usual statement, "What will the committee do?"

That is, at the time and place where opposition could be effectively made, he refused to act.

I desire by way of emphasis to call to the attention of the House and the whole United States the fact that at the hearing in December, 1928, on the proposed refund to the United States Steel Corporation for the year 1917 the Treasury stated that if the joint committee disapproved the proposed settlement, assuming the responsibility for the ultimate outcome, the Treasury would refuse to make the refund and settle the case through litigation. A Senator then challenged Mr. GARNER to propose the rejection, and this Mr. GARNER declined to do. That is, the hour had struck for action, but there was nobody at home. Why should a man complain of others that in his imagination they do not do thus and so, for lack of courage, when he refuses to accept responsibility and propose the action he says he believes should be taken.

I think it is quite clear from the course of this discussion that I have accepted the responsibility that my service on the committee necessitates and act as I believe the facts warrant.

I desire again to call the gentleman from Texas [Mr. GARNER] to the bar.

On February 18, 1930, the gentleman from Indiana [Mr. Wood], chairman of the Committee on Appropriations, asked unanimous consent for immediate consideration of House Joint Resolution 252, making an additional appropriation for the maintenance of the Senate Office Building, CONGRESSIONAL RECORD, page 3875. The Senate had made expenditures in advance of appropriations. But I quote from the RECORD with comments. All Members present on the floor at that time, when they read that part of the colloquy found in the first column will realize that it has been abbreviated and some "Garnerese" language deleted:

Mr. GARNER. We could say no, but you have not the courage to do it. That is all. [Laughter.]

Mr. WOOD. The opportunity is now open; let us see you perform.

Mr. GARNER. I will vote against the appropriations.

Mr. SNELL. This is a unanimous-consent proposition, and all the gentleman has to do is to object.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. [Laughter.]

Some voices rallied the gentleman from Texas to object. He did not. That was retreating under fire.

The yen of the gentleman from Texas for information on the refunds is appealing and the way he neglects to satisfy it is appalling. At the other end of Pennsylvania Avenue in the Treasury Building are two rooms filled with the records, documents, books, and so forth, relating to the refunds in this case. Since December, 1928, and before, the doors of these rooms have been yawning open to the gentleman from Texas and he has been yawning back at them.

If the disquiet the gentleman from Texas seems to feel about these refunds is not a political distress, why, in a period of 390 days, exclusive of Sundays and holidays, did he not give the contents of those rooms the privilege of his acquaintance. Had he done so, would he take the position he now takes? I think not. I believe the gentleman in his wild Texan heart really believes the Treasury "has done a good job."

There is a period of 30 days after a proposed refund is reported by the Treasury to the joint committee before such refund can be paid. Upon the receipt of the proposed refund for 1917, the expert staff of the joint committee examined the returns, conferred with the Treasury on all matters of policy and procedure, and reported in writing; a copy of this report of the staff was delivered to each member of the joint committee several days in advance of the date set for the hearing. It set out quite fully all the questions involved. At the hearing the members examined the Treasury officials and the staff of the committee and decided not to disturb the settlement as proposed by the Treasury.

In the matter of the proposed refunds for 1918, 1919, and 1920, the same procedure was followed. The report of our staff was delivered to the members on March 5. The hearing was set for March 11, six days later. The conclusion was not to disturb the proposed settlement.

I gave the proposals for 1917 and those for 1918, 1919, and 1920 considerable attention. Questions of serious import were involved, including amortization allowances, invested capital, consolidated returns, and other issues under our excess or war profits tax laws. I believe the decision reached by the Treasury satisfactory and favorable to the Government.

The Treasury is applying the same rules to all taxpayers, large and small, that equal consideration may be given to all taxpayers, irrespective of the amounts involved.

The United States Steel Corporation is, I understand, our largest single taxpayer, paying, as I recall, about 8 per cent of the income taxes collected for the years named. This, however, entitles it to no special or favorable consideration, nor does it justify discrimination against it.

If the gentleman from Texas is insinuating that sinister practices are involved in the refund under discussion, let me make this observation:

So many persons participate in the determination of a case like this that to make a corrupt decision would require a conspiracy of a considerable number. No sane man believes such a conspiracy could exist, even without considering the high character and integrity of the personnel which handles these matters. If improper practices prevailed in the department somebody would be benefiting to such an extent that it would become evident, and it would not be necessary for anyone to go about with nose in the air testing for a taint; such a conspiracy would smell to heaven.

The honesty, efficiency, and public service of the Treasury has caused public approval of and confidence in that department. Yet political necessity thinks an advantage can be attained by attacking it. I do not believe there is anything in the work of the Treasury on these refunds that warrants the criticisms made, but they are based upon political partisanship. When did the public lose confidence in the Treasury? Every election following an attack by Mr. GARNER on the Secretary of the Treasury has resulted in an increased Republican majority in the House. The minority leader, in his naïve manner, merely emphasizes the extraordinary good fortune of the public in having a man of Mr. Mellon's outstanding ability and integrity, in charge of its finances.

During the recent hearing by the joint committee the gentleman from Texas occupied a good deal of the time in asking questions and expressing his opinions, as was his right. At the conclusion the chairman asked whether any member desired to further question the Treasury representatives or the staff. The gentleman from Texas indicated that he did not, nor did he then ask that further information be supplied or that the hearing be continued. Two more days were available for inquiry. If the thirst for information was so imperative, why not drink when at the spring? When has Mr. GARNER asked the Treasury for additional information since the settlement of the 1917 refunds? When did he ask that the joint committee make an investigation other than that made by the staff of the proposed refunds for 1918, 1919, and 1920, of which he was advised in December, 1928? What other cases are there about which he has asked for information?

The question of appeals to the courts was raised. If an appeal were to be taken, it is estimated that it would be five years before final decision could be obtained. The courts give the taxpayers the advantage in disputed questions. Undoubtedly the decision of the courts would be honestly made, but in my judgment no more honestly than those now made by the bureau.

If complaint is now made of the amounts of refunds proposed by the Treasury, would it not follow that the courts would be more severely complained of for awards larger than the refunds? The gentleman from Texas [Mr. GARNER] never moved in the joint committee that the matter be referred to the

courts nor made any other motion that had for its purpose to set aside a proposed settlement. That was the forum which offers a proper opportunity to present such motions.

If the United States Steel case were taken to the Supreme Court, the decision would not give valuable precedents for use in the future. The issues involved in the case arise entirely under the profits tax law, repealed in 1921. There are but very few other cases still pending in the Treasury for years affected. It is of much greater importance, in my opinion, that the cases for the war years be disposed of finally, upon a basis fair to both the Government and the taxpayers, and be put permanently behind us.

The statement that the joint committee can meet only when the chairman so desires is not correct. If at any time a member desires the committee to meet for the consideration of a matter within its jurisdiction, a meeting can be called. I have never denied such a request. Has the gentleman from Texas ever made such a request? The members of the joint committee have access to the records and the staff, and it is to be presumed that they discharge the duties of their membership.

The staff of the joint committee, on their own motion or at the suggestion of the chairman, continually makes inquiry as to Treasury methods and suggestions of changes. If members of the committee wish others made, they have only to indicate them.

We now come to the more general subject of the administration of the refund provision of the revenue laws. The gentleman from Texas has indicated that he believes the joint committee's action is a purely formal matter. Does the gentleman from Texas believe that the staff of our joint committee is incompetent or inattentive to its duties? Is he unaware of the work that is done?

The joint committee was created in 1926. We have had and still have as the chief of our staff of experts Mr. L. H. Parker. Mr. Parker, you may remember, had general charge of the investigation by the select Senate committee, known as the Couzens committee, in 1924. It is my opinion, and I think that everyone shares this opinion with me, that Mr. Parker is a most capable, diligent, and impartial investigator. It is my knowledge that he gave detailed investigation to the refunds in question.

It is my opinion that Mr. Parker must be credited with a very substantial part in the improvement of the administration of our tax laws. His accomplishments have not been accompanied by newspaper headlines or political debate. Nevertheless, they have been none the less substantial. The examination of refunds submitted to the committee is neither a formal nor a perfunctory one. Each case is examined. Investigations frequently are made in the bureau. Requests for additional information are submitted. I can say, unhesitatingly, that no refund has been paid until all questions raised by the staff of the committee have been settled satisfactorily. Let me read Mr. Parker's report on the administration of the refund provisions for 1929:

GENERAL SURVEY OF OVERASSESSMENTS

The total refunds shown in detail in Part I amount to \$38,203,521.84; the total credits amount to \$15,969,125.14; and the total abatements in connection with the same cases amount to \$8,613,275.33. The total net overassessments reported to the committee during the calendar year 1929, which were subsequently paid, credited, or abated, amounted to the sum of the above three items, or to \$62,785,922.51. On these overassessments the sum of \$12,886,965.66 was allowed in interest, making a grand total of overassessments and interest of \$75,672,888.17.

In addition to the above, there was reported to the committee three overassessments, totaling \$1,304,438.91, which have not been paid. The refund in one of these cases was withheld on the initiative of the commissioner on account of a proposed deficiency. The second case is being recomputed, and the third case is being reviewed, after conferences between the department and this office.

It is interesting to note in regard to the overassessments reported during the calendar year 1929, and paid after the expiration of the 30-day period prescribed by law, that there has been a marked decrease in the rate at which these overassessments have been allowed in comparison with the rate shown by our former reports. For the 7-month period—June 1, 1928, to December 31, 1928—the rate at which overassessments were made with interest was \$15,224,270 per month. During the calendar year 1929 this rate was only \$6,306,074 per month, which represents a decrease of over 58 per cent in the rate of overassessment. For the 21-month period—March 1, 1927, to April 24, 1928, and June 1, 1928, to December 31, 1928—the rate of overassessment, with interest, was \$10,676,188 per month, and the present rate is 41 per cent less than this rate.

In view of the above, it seems reasonable to hope that the peak of the high-refund years has been passed. However, it appears important to

consider two questions: First, what are the reasons for the decrease in refunds and, second, what are the principal causes for the refunds.

In regard to the first question, it has been computed that for the calendar year 1929, 71 per cent of the adjustments were for the excess-profits tax years up to and including 1921, and that the remaining 29 per cent were for years subsequent to 1921. In the case of the preceding 21-month period, 83 per cent of the overassessments were for the excess-profits tax years, and only 17 per cent for subsequent years. It is believed, therefore, that the decrease in the rate of overassessment is largely due to the fact that the bureau has closed out a large proportion of the excess-profits returns. It is evident that the refunds will be much lower when all the excess-profits tax controversies are settled.

It may also be properly noted that the average interest charge dropped to 20.53 per cent in 1929 from an average interest charge of 26.72 per cent in the preceding 7-month period, so that a considerable saving in interest may also be expected for the future.

As to the causes for the refunds, this has already been shown by the classification in Part I, but it appears important to discuss these causes in some detail.

In the first place, if reference be made to the classification of overassessments shown on page 30, it will be observed that the most important single cause of the 1929 refunds is the new interpretation placed on the life-insurance provisions of the 1921 and subsequent acts by the decision of the Supreme Court of the United States in the case of the National Life Insurance Co. Nearly 12 per cent of all the overassessments result from this cause. It is not necessary to go into this matter further here, for this office has already submitted to the committee a preliminary report on Federal Taxation of Life Insurance Companies, which covers this subject at length.

The second major single cause of this year's refunds is the expiration of the statute of limitations. Some changes were made in this provision, or rather in the provisions providing for these limitations in the revenue act of 1928. It is believed that our principal troubles were due to the defects in the former acts, and that the present act will prove satisfactory. However, the operation of the new provisions will be carefully observed.

The third important cause of the refunds described in this report is depreciation. The determination of depreciation, while it is a fact question, is obviously primarily a matter of judgment. It is the cause, and undoubtedly will continue to be the cause, of considerable controversy between the Government and taxpayer, unless some arbitrary rule is devised which will be satisfactory. It is not impossible with low tax rates that some solution of the present difficulties may be found. It is the opinion of this office that with the experience that our taxpayers have had with this subject, the department should discourage changes in the depreciation rates shown on current returns.

It would appear that the judgment of the taxpayer, at the time of making the return on the question of depreciation would be better than his judgment four or five years after, when he is making application for a refund. There is also another matter which is very unsatisfactory in connection with the present method of depreciation. Depreciation is allowed on cost, or on March 1, 1913, value, at a certain definite rate. In many cases, however, the plant account becomes simply a sum of money, and depreciation reserves simply a sum of money, and the taxpayer keeps no adequate record of his plant in use. When this is true the taxpayer, instead of reducing his plant account when certain items of equipment are discarded, keeps on depreciating his equipment with the result that in place of getting 100 per cent depreciation, he may get 200 per cent. It is the opinion of this office that a complete report on depreciation will be desirable.

It will be observed from the classification of overassessments shown on page 30 that in addition to depreciation other deductions which are determined by the exercise of judgment are also troublesome. These deductions are amortization, depreciation, inventory adjustment, and losses on sales of capital assets. Other allied subjects requiring the exercise of judgment are valuations for estate-tax purposes, March 1, 1913, valuations, and valuations on account of sale of capital assets. Attention is drawn to the fact that a report on depletion has already been made by the staff and is now before the committee.

Our former reports in connection with refunds and credits criticized the application of the special assessment provisions in a number of cases. At the time of making these other reports special assessment was a major cause of the large refunds made. This situation is no longer true, special assessment having dropped from first place to eighth place in order of importance.

CONCLUSION

It must be concluded that the overassessments reported to the committee during the calendar year 1929, and paid after the 30-day period prescribed by law, represent accurate and careful determinations of final-tax liability.

The staff received from Hon. Robert H. Lucas, Commissioner of Internal Revenue, and from Mr. E. C. Alvord, Special Assistant to the Secretary of the Treasury, very satisfactory cooperation in connection

with its examination of the overassessments. All issues raised have received careful consideration and full and open discussion.

Respectfully submitted.

L. H. PARKER, *Chief of Staff.*

An objection raised by the gentleman from Texas is that no consideration is given tax refunds by the committee unless Mr. Parker sees fit to recommend such consideration. I am surprised at having to answer such a complaint. On January 5, 1929, I stated in this House the procedure of the joint committee in regard to refunds. I set forth that the procedure had been established by Hon. William R. Green, the former chairman of the committee, which procedure was approved by the committee, and appears to be working satisfactorily.

I inserted in the RECORD a letter from Mr. Parker covering the details of the refund procedure in full—page 1207, CONGRESSIONAL RECORD, January 5, 1929. I have not had complaint from the members of the committee prior to the statement by the gentleman from Texas on Friday. It is true that on March 12 last the gentleman requested to be currently advised as to proposed refunds, with which request I immediately complied. The members of the joint committee have access to the staff and files at all times.

Another comment of the gentleman from Texas is in connection with the refund to the Baldwin Locomotive Works for the years 1912 to 1922. He seems to think the statute of limitations has run on the early years at least. If he will look at section 252 of the revenue act of 1921, he will find that Congress has specifically made this statute of limitations ineffective under certain circumstances. This section provides as follows:

Provided further, That if upon examination of any return of income made pursuant to the revenue act of 1917, the revenue act of 1918, or this act, the invested capital of a taxpayer is decreased by the commissioner, and such decrease is due to the fact that the taxpayer failed to take adequate deductions in previous years, with the result that an amount of income tax in excess of that properly due was paid in any previous year or years, then, notwithstanding any other provision of law and regardless of the expiration of such 5-year period, the amount of such excess shall, without the filing of any claim therefor, be credited or refunded as provided in this section.

How can the action taken by the commissioner in conformity with this law laid down by Congress be criticized? The statute of limitations is expressly waived in this type of case by the revenue acts. A provision similar to the one quoted above appears in both the 1924 and 1926 revenue acts.

Also, the gentleman from Texas is worried about the large number of refunds to the State of Pennsylvania. In this connection, I would draw his attention to the fact that based on 1927 statistics Pennsylvania pays 10 per cent of the corporate tax, New York and Pennsylvania together 40 per cent of the corporate tax, and Texas only 1½ per cent of this tax. It certainly would be surprising if New York and Pennsylvania did not receive more refunds than Texas. In passing, I would observe that the United States Steel Corporation returns its tax from New York.

The minority leader mentions the refund to the American Window Glass Co. as being suspicious. I can not go into all the details of this case here, but I can state one fact in regard to this case, which is important, for it is typical of many refunds which look large on their face, but which really are bookkeeping adjustments. In this case, the American Window Glass Co. filed a consolidated return showing a tax of some \$2,900,000. One of the companies in the consolidated group was the American Window Glass Machine Co. The bureau refused to allow this latter company to be affiliated with the group as only 76 per cent of its stock was owned by the parent company. What happens? It is necessary to refund to the American Window Glass Co. \$2,131,000 because of the exclusion from the consolidated return of the income of the machine company, but at the same time the bureau assesses deficiencies against this American Window Glass Machine Co. of \$1,717,000, so that there is a net tax adjustment in this case of \$414,000 instead of over \$2,000,000 as it would first appear.

That is, when the consolidated group reports its total income, it is larger; it gets into the higher brackets. But when this consolidated report was rejected and separate reports were made the corporations paid in the lower brackets.

On Tuesday, the gentleman from Texas, in popular terms, described to the House a proposed refund to Mr. John D. Rockefeller of 7,000,000 buffalo nickels for the year 1917. I would like to advise the gentleman, using his own terminology, that even after the refund Mr. Rockefeller will pay a final tax for the same year, 1917, of 276,000,000 buffalo nickels. Therefore the tax adjustment is less than 2½ per cent. The merits of the case have not yet been investigated by the staff.

The gentleman from Texas refers to a refund of \$4,320,000 to the Middle States Oil Corporation. Now, strictly speaking, a very small part of this is a refund. Practically \$4,000,000 is an abatement. That is, it is the cancellation of a jeopardy assessment which was never paid. This case, however, has been a difficult case for both the bureau and our staff. As a matter of fact, a part of the books of the company were destroyed or taken to Europe. What books remained showed fictitious income for the purpose of deceiving stockholders. The company is now in the hands of receivers.

The minority leader thinks the Speaker ought to appoint a committee to investigate the Treasury. It appears that the gentleman wants to get a look at the "books," so I have a suggestion to make which may obviate the necessity for the committee he suggests. The Joint Committee on Taxation has the right to look at the "books" now, and my friend from Texas is a member of that committee; therefore I invite him to go to the Treasury where, with the assistance of our staff, if he so desires, he can look at the "books," see how the business is conducted, see what the Treasury does and what our staff does.

Mr. GARNER, as a member of the joint committee, has the right, as does the Secretary of the Treasury, to examine the contents of those rooms. Why, in General Sherman's definition of Texas and war, has he not done so?

The examination of refunds is only a part of the work of the staff. Very important are the constructive reports prepared by the staff which allow recommendations to be made on legislative subjects in the light of the actual operation and effect of the provisions of the revenue acts. Three important reports are now awaiting the consideration of the committee, one on capital gains and losses, one on insurance companies, and one on depletion. I shall call the committee to consider these and other important matters as soon as the tariff bill is disposed of.

Now, to conclude in regard to the United States Steel Corporation. This company paid an original tax of \$304,000,000 for the three years 1918, 1919, and 1920. The final tax liability is placed at \$312,000,000. So that the Government gets \$8,000,000 more tax from the result of the audit of this case. The entire refund of principal of \$21,000,000 is due to erroneous additional assessments. Nearly 40 per cent of the net income of this group of 195 corporations went to the Government in taxes during this 3-year period. In 1918 it paid nearly 60 per cent of its income to the Government in tax.

Moreover, in 1918 the Steel Corporation paid nearly 8 per cent of the total tax paid by all corporations in the United States. I feel no apprehension as to the refund in this case, for it only represents at most a 7 per cent adjustment from the highest figure assessed. In the case of some corporations, for instance, the North & South Oil Co., of Luling, Tex., we find the tax reduction has been 88 per cent, so that it seems to me that the Steel case is getting criticism simply on account of its size without regard to the merits of the case.

In my judgment, the joint committee should determine refund cases on the basis of the facts in each case. We are charged with the performance of an important financial work, entirely disassociated from politics. The payment of a tax has no political import and a refund should be regarded in the same way. The payment of taxes is a serious business to the taxpayers. They are entitled to have every phase of their cases considered on a business basis, and have taken from them in the final settlement only that amount which is justly due from them. [Applause.]

A statement of the material issues involved in the proposed settlement for the years 1918, 1919, and 1920 is contained in the following communication from the Treasury Department to the Senate Committee on Appropriations:

TREASURY DEPARTMENT,

Washington, March 4, 1930.

MY DEAR MR. CHAIRMAN: In response to the request of Senator McKELLAR, at a meeting of the Subcommittee of the Senate Committee on Appropriations considering the Treasury appropriation bill, on March 1, 1930, I am submitting below a résumé of the adjustments made by the Internal Revenue Bureau, in the case of the United States Steel Corporation and subsidiaries, resulting in the overassessments of income and profits taxes for the years 1918, 1919, and 1920. Before discussing the present overassessments, it is believed appropriate to refer briefly to the bureau's procedure with the audit of these years and of 1917, with particular reference to the additional assessments made and overassessments heretofore allowed. It is believed that this can be best done by quoting from the outline memorandum (covering the year 1917) submitted to the Joint Committee on Internal Revenue Taxation as follows:

"(2) Taxes paid for 1917: The tax on the original return was \$199,850,857.46, filed April 16, 1918.

"Subsequently, following a so-called 'superficial audit,' an amended return was filed September 29, 1919, showing \$7,190,165.71 additional, which was paid. This was less than the amount shown by the superficial audit, the difference being abated.

"Following a change in article 170 of regulations 33 there was assessed and paid an additional \$6,369,497.75 on December 3, 1920.

"The first comprehensive bureau audit (by Forster) indicated a still further tax of \$9,426,115.14. The taxpayer conceded a payment of \$4,000,000, and this was assessed and paid August 29, 1921, pending further audit.

"These additional payments were made by the company in accordance with its settled policy to pay amounts claimed without filing protests and holding conferences to determine correct tax and to file claims for refund after payment, trusting to department to reach correct adjustment ultimately and refund whatever was due. (We have had the use of this money for from seven to nine years.)

"Proposed refund: The proposed refund is for \$15,756,595.72 tax and approximately \$11,000,000 interest, or a total of something over \$26,000,000.

"The company to protect its rights began proceedings last July in the Court of Claims and claimed a total refund of \$101,000,000 tax and approximately \$60,000,000 interest, to which would be added interest of 6 per cent up to the date of final judgment by a court of last resort.

"Subsequent audit work in the bureau indicated overassessments of approximately \$28,000,000, and this amount, with interest making a total of approximately \$31,000,000, was credited against deficiencies then being claimed for subsequent years instead of being refunded. This credit will be worked out and adjusted when the taxes for those years are finally made.

"The proposed refund is based on exhaustive consideration of the entire case by a special committee of three of the most able and experienced men in the bureau working in conjunction with auditors who have devoted literally years of time to the case. Their unanimous recommendation of this refund has received the approval of the general counsel and the commissioner after careful examination.

"Final letter to taxpayer on 1917 alone embraces 2,400 closely typewritten pages.

"The files relating to the case comprise probably several hundred thousand pages and no one could comprehend all of the details involved without devoting at least a year to its study.

"While the entire overassessment (including the refund now proposed and the credits heretofore made) is large in amount, proportionately it represents only 13 per cent of tax shown on original return. If on a tax of \$100,000 a refund of \$13,000 were made it would pass unnoticed and would be so small that this committee would not be interested."

Year 1918

Taxes paid, original return	\$245,531,180.44
Additional payments:	
1921	\$32,702.11
Aug. 29, 1921	3,500,000.00
Oct. 10, 1921	2,250,000.00
June 22, 1926	23,686,394.60
Mar. 31, 1927	8,417.21
Total additional payments	29,477,513.92
Total payments	275,038,694.36
Prior overassessment certificates:	
Feb. 13, 1928	1,512,719.60
Mar. 10, 1928	7,864,171.82
	9,376,891.42
Proposed refund:	
Principal	14,369,612.45
Total overassessments	23,746,503.87
Interest (approximate)	8,400,000.00
Net additional tax	5,731,010.05
Taxpayer's claim in court:	
Principal	51,557,472.10
Interest (approximate)	31,000,000.00

In February, 1921, the taxpayer made voluntary payment of \$32,702.11 due to announced bureau policy (T. D. 3215 modifying T. D. 3105) of disallowing so-called donations to war activities, like the Red Cross, etc.

The taxpayer conceded the proposed additional taxes to the extent of \$3,500,000 which it paid on August 29, 1921, and \$2,250,000 paid on October 10, 1921. At the time these payments were made it was known that the investigation of the case was incomplete, but there being some indication of an additional tax the payments were made under the expectation that the matter would be subsequently readjusted. In this connection the taxpayer, through the early stages of the matter, followed the policy of encouraging the bureau to reach its conclusion in the case in order that disputed points could be taken up later and adjusted.

During the pendency of numerous issues involving the amortization claim which was under consideration in 1924 and 1925, an additional

field examination was made late in 1925, and the determination of the amortization allowance was made the basis of further detailed investigation. Also, in the meantime a ruling was made in S. M. 1530, III-1 C. B. 307, with reference to the treatment of intercompany profits in opening 1918 inventories, subject to the normal tax of 12 per cent. The audit was revised in June, 1926, and set up an additional tax of \$23,686,394.60, which was assessed and satisfied mainly by credits from 1917 overpayments above mentioned. The balance of \$1,054,474.21 was paid on August 20, 1926.

The additional assessment of \$8,417.21 was made in December, 1926, due to correction of minor errors in the preceding audit.

In February, 1928, after further consideration of the amortization claim and the invested capital, an overassessment of \$1,512,719.60 was allowed and credited against additional tax for 1920.

Shortly afterward, through an increase in the amortization allowance, a further overassessment was allowed of \$7,864,171.82 and credited against the original tax assessment for 1927 on March 15, 1928.

From the foregoing description of the various audit adjustments, it will be readily seen that at no time did either the taxpayer or the Government consider any audit for 1918 made to be final, but the present settlement for this year, 1919 and 1920, is agreed by both parties to be final. The taxpayer has consented to dismiss its suits pending in the Court of Claims and to file closing agreements under section 606 of the revenue act of 1928.

With the foregoing summary of the adjustments heretofore made, attention will be given to the salient features connected with the pending settlement for 1918.

IN RE UNITED STATES STEEL CORPORATION AND SUBSIDIARIES BOND PREMIUM IN INCOME

The petition to the Court of Claims and the taxpayer's brief objected to the bureau's action in including in gross income of six railroad subsidiaries and of the Union Steel Co. proportionate parts of so-called premiums, being the excess over par values, received on bonds issued by such corporations prior to 1918, upon the ground that no income therefrom was attributable to 1918. The taxpayer relied upon the decisions rendered in the cases of Old Colony Railroad Co. (6 B. T. A. 1025), not acquiesced in by commissioner but affirmed by the circuit court of appeals (26 Fed. (2d) 408), certiorari to United States Supreme Court being granted but the case later dismissed on request of the Government; and Chicago, Rock Island & Pacific Railway Co. (13 B. T. A. 988).

With respect to this issue, article 544 (a) (2) of regulations 45 provided that if bonds be issued at a premium, the net amount of such premium is gain or income that should be prorated or amortized over the life of the bonds. This attitude has been preserved in later regulations, Nos. 62, 65, 69, and 74. The position of the bureau is premised upon the hypothesis that the premium received is of the same nature as the discount sustained upon the issuing of bonds, below par, and is a properly recognized element of cost of obtaining the loan, which should be so spread over the life of the loan that each year benefiting from the loan shall bear its proportionate part of the cost of obtaining that benefit. (Cf. G. C. M. 3832, VII-1 C. B. 123). It is obvious that if two corporations, of equal solvency, issue bonds, those bearing an interest rate above current market rates will produce a premium while those bearing a rate lower than market will require their issuance at a discount, so that the buyers of the two classes of bonds may realize the same net return on their investment. This treatment by the bureau of bond premium is in accordance with the practice prescribed by the Interstate Commerce Commission since 1914.

In the board's decision in the Old Colony Railroad Co. case, supra, reliance was had upon the cases of Baldwin Locomotive Works v. McCoach (221 Fed. 59), Chicago & Alton Railroad v. United States (53 Ct. Cls. 41), Corn Exchange Bank (6 B. T. A. 158), and New York Life Insurance Co. v. Edwards (271 U. S. 109). The decisions in the first two cases involved returns of income under the 1909 act, which recognized only cash receipts and disbursements, as distinguished from accruals, whereas the bureau's present position is based on the accrual system of accounting, recognized by statute and in the decisions of United States v. Anderson and Yale & Towne Manufacturing Co. (269 U. S. 422), American National Co., etc., v. United States (274 U. S. 99), and Galatoire Bros. v. Lines (C. C. A., 23 Fed. (2d) 676). The last two decisions cited by the board, above mentioned, did not involve the taxability of the obligor but of the bond investor. The board, however, recognized a taxpayer's right to spread bond discount over the life of the loan, in the case of Chicago, Rock Island & Pacific Railway Co., supra, at the same time drawing a distinction between taxable income, under the constitutional amendment, and statutory deductions from gross income. On November 19, 1929, the board adhered to its former position that bond premium is not income in the year 1921 when actually received prior to that year, in the case of the Old Colony Railroad Co. (18 B. T. A. 267), on authority of the decision in the earlier case by the circuit court of appeals, supra. The taxpayer has yielded on the issue herein in order to effect a settlement without litigation, although, as above indicated, the decisions to date are quite favorable to the taxpayer.

UNRELEASED PREMIUM ON BONDS PURCHASED

There is an issue closely related to the above matter, namely, in the case of the Duluth, Missabe & Northern Railway Co., which had issued bonds at a premium in years prior to 1918 and during the latter year bought in some of these bonds for more than par value. Upon this purchase the bureau computed a gain described as "unreleased premium," representing the balance of premium attributable to the period from 1918 to maturity, after spreading the rest of the premium over years prior to 1918. The taxpayer's position that such "unreleased premium" is not taxable income in 1918 is based upon the same grounds as in the preceding issue, and the company cites also the cases of *Bowers v. Kerbaugh-Empire Co.* (271 U. S. 170), and the *Independent Brewing Co.* (4 B. T. A. 870). The Supreme Court decision just mentioned did not involve bond premium or discount, and the dissenting opinion by a member of the board, in the case of *National Sugar Manufacturing Co.* (7 B. T. A. 577), not acquiesced in, attempts to distinguish between the facts in that case and the simple situation of diminution of liability in a going business, such as results from the purchase by a corporation of its own bonds at a price less than the amount received for them when issued. The commissioner declined to acquiesce in the board's decision in the *Independent Brewing Co.* case, to the effect that where a corporation purchases its own bonds at a price less than the issuing price it realizes no taxable income from such purchase. The case of that corporation on this issue is now pending in the United States District Court for the Western District of Pennsylvania.

In the case of *Meyer Jewelry Co.* (8 B. T. A. 1319) the board held that the forgiveness by creditors of indebtedness of a corporation was not income. The commissioner did not acquiesce in that decision. Some of the cases in which the commissioner has declined to acquiesce in the board's position, that taxable income is not realized when bonds are bought back at less than issuing price, are as follows: *New Orleans, Texas & Mexico Railway Co.* (6 B. T. A. 436); *Houston Belt & Terminal Co.* (6 B. T. A. 1364); *Indianapolis Street Railway Co.* (7 B. T. A. 397); *National Sugar Manufacturing Co.*, supra; *Petaluma & Santa Rosa Railroad Co.* (11 B. T. A. 541), although the commissioner did acquiesce in the holding that no taxable income accrued on a purchase by a corporation of its own bonds below par, to be held as an investment; and *General Manifold & Printing Co.* (12 B. T. A. 436). See also *Douglas County Light & Water Co.* (14 B. T. A. 1052) and *Eastern Steamship Lines (Inc.)* (17 B. T. A. 787). To effect a settlement of the entire case, the taxpayer herein has consented to waive its contentions on this point.

PENSION TO FORMER PRESIDENT EDGAR ZINC CO.

A claim has been made to a deduction from gross income of the *Edgar Zinc Co.*, an affiliated member of the group, of an amount representing a pension to a former president of that corporation. This payment was made to the former employee pursuant to a resolution by the directors on November 2, 1915. The deduction has been allowed, on authority of article 108, regulations 45, and the board's decision in the case of *C. Wildermann Co.* (8 B. T. A. 771) acquiesced in.

NET LOSSES, VARIOUS SUBSIDIARY COMPANIES

A claim has been asserted by the taxpayer that net losses of 17 members of the affiliated group, sustained in 1919, should be deducted from the net incomes of the same members earned in 1918 instead of such losses being absorbed by the net income in 1919 of other members of the group. This claim is contrary to the long-established practice of the department, and appears to rely upon the so-called "legal theory" of consolidated returns, as distinguished from the so-called "accountant's theory" or "economic unit" theory of consolidation. See the board's discussion of these two theories in the case of *Gould Coupler Co.* (5 B. T. A. 499), which held, *inter alia*, that the operating losses of one member of a consolidated group should be deducted from the net income of the other members of the group, meaning for the same taxable period. Article 637, regulations 45 (so also in the later regulations 62, 65, 69, 74), prescribed that in cases of consolidated returns the consolidated taxable net income, for a particular period, should be the "combined net income of the several corporations consolidated." Under this view of consolidated returns the identity of each corporation in the group becomes merged or "fused" with the other members of the group, although the entities are expressly preserved for certain purposes, such as allocating the resultant total tax liability among the members of the group.

In the present case the taxpayer would have the bureau recognize the identity of each member, so that a net loss of one affiliated corporation in 1919 would be applied, under section 204 of the revenue act of 1918, against that particular corporation's net income for 1918. Reliance was had by the taxpayer upon the board's decisions in the cases of *Butler's Warehouses (Inc.)* (1 B. T. A. 851); *Cincinnati Mining Co.* (8 B. T. A. 79), acquiesced in; *Alabama By-Products Corporation* (16 B. T. A. 1073); and *National Slag Co.* (16 B. T. A. 1310); also upon bureau rulings I. T. 1728, II-2 C. B. 245, and O. D. 683, 3 C. B. 311.

The last two rulings were cited to the effect that in a consolidation each member of the group preserves its identity, but in both of those cases corporate identity was recognized only in respect to the filing of

refund or credit claims, without reference to computation of the consolidation tax. The *Butler's Warehouses (Inc.)* decision did not involve any consolidated return, but held that under section 204 of the 1918 act a net loss sustained by a corporation organized January 17, 1919, during the balance of that year could not be applied against that corporation's net income for 1920, because Congress was granting relief to corporations in existence in 1918 and subject to the high rates of tax prevailing in that year. In the *Cincinnati Mining Co.* case the method of computation of a consolidation tax was not involved, but the board held the corporate entities should be recognized in the matter of allocating the total tax among the members of the group. This case had nothing to do with application of a net loss, but merely held that no tax should be allocated to a member having no net income.

The board held, in the *Alabama By-Products Corporation* case, supra, that a corporation having a net loss in 1919, when unaffiliated, was entitled to apply enough of that loss to 1918 to absorb its own net income for 1918 and to apply the balance against its own net income only for 1920, when it became affiliated, and none against the net income of other members of the group of 1920. The commissioner's attitude as to acquiescence in that decision has not yet been announced. The decision in that case was cited by the board with approval in the case of *National Slag Co.*, which was decided in favor of the commissioner. In the latter case one corporation, formed January 1, 1924, had a net income in 1924 and was affiliated with a corporation that sustained losses in 1922, 1923, and 1924. The board held that the commissioner correctly refused to allow a "pyramiding" of the affiliated corporation's losses of 1922 and 1923 with its loss in 1924, but held that the loss in 1924 was properly applied against the first corporation's net income in 1924, without any suggestion that the loss of 1924 be applied against that corporation's net income for 1925, if any.

In the case of *Hutt Contracting Co. et al.* (17 B. T. A. 818) the board held that where a corporation sustained a net loss for 1921 and 1922, and was a member of an affiliated group in 1922, the net loss for 1921 was inapplicable to reduce the consolidated net income for 1922. That each corporation is a taxable entity, in the first instance, has been recently reiterated by the board in its decision in the case of *Apartment Corporation* (17 B. T. A. 876), citing the *Alabama By-Products Corporation* decision as authority for its position. There again the issue was not as to the fundamental basis of consolidation.

In the case of *Sweets Co. of America (Inc.)* (12 B. T. A. 1285), now before the circuit court of appeals, the facts here relevant may be epitomized thus: Corporations A and B were consolidated during the first half of 1919, when A had a net income largely in excess of B's net loss. During the next four months A, B, and C were affiliated, and A had a net loss in excess of B's income, while C had neither profit nor loss. Corporation C absorbed A and B and existed alone during the last two months of the year 1919, when it had a net loss in excess of all net incomes for the year. The board held that since there were three taxable "units" during the year, C could not be recognized as the "same taxpayer" as A; that A's net losses during the 4-month period could not be applied against its own net income for the preceding 6-month period, otherwise "the unit conception of an affiliation would fall"; that as the losses within the group are deductible from the incomes within the group, all the members have the benefit of such deductions; that if A's loss during the 4-month period were deducted from its own net income for the preceding 6-month period there would result a double deduction, due to prior offsetting of such loss against B's net income for the 4-month period, which double deduction "is contrary to the purpose of the statute"; and that because an affiliated group is regarded by the board as a unit for the purpose of computing the tax, there is no basis for applying the consolidated loss of A, B, and C for the 4-month period against the consolidated net income of A and B for the first six months of that year, apparently on the ground that C's operations might affect the net loss of the group during such 4-month period, and C not be a member of the consolidated group having the net income to be offset by the net loss. (Cf. *American Steel Co.*, 7 B. T. A. 641 (acquiesced in); *Owensboro Conserve Co.*, 8 B. T. A. 615; *Hancock Construction Co. et al.*, 11 B. T. A. 800 (acquiesced in); *Brighton Corporation*, 16 B. T. A. 945; and *Struthers-Ziegler Cooperage Co.*, 18 B. T. A. 537.) The board's decision in the *Sweets Co. of America (Inc.)* case is the subject of adverse criticism in the *Commerce Clearing House Illustrative Case Service*, 1929, article 4033.

It is noted that the most recent decisions of the board since the *Remington Rand (Inc.)* decision (33 Fed. (2d) 77) are leaning more to the legal theory of affiliation. (See *Riggs National Bank*, 17 B. T. A. 615; *Liberty National Co.*, 18 B. T. A. 510; and *Insurance & Title Guarantee Co. v. Commissioner*, Fed. (2d).)

Without indulging in further discussion here as to the fundamental basis of consolidation, for tax computation, as to whether any inconsistency exists between sections 204 and 240 of the revenue act of 1918, or as to the merits of the various board decisions above cited, it may be observed that for the purpose of settling the case the taxpayer has receded from its contention on this issue and consented to absorption of the 1919 net losses by the net incomes of the other members of the consolidated group in 1919.

LICENSES OF PATENTS—LORAIN STEEL CO.

On April 11, 1917, Charles F. Jacobs, as party of the first part, and the Lorain Steel Co., a subsidiary herein, as party of the second part, entered into an agreement which provided, in effect, that in consideration of the down payment the former would grant to the latter the sole and exclusive right and license, under certain patents and pending patent applications and the patents which might be issued under such applications, to practice the inventions covered by such patents and applications and to use in certain lines of business endeavor the processes and apparatus described thereunder for a term not to extend beyond May 1, 1919, and upon payment of a further sum an unrestricted and nonexclusive right and license covering the life of the patents, similar to the right and license first mentioned, and also rights and licenses corresponding to those first granted under any letters patent of the United States covering similar inventions "which may thereafter be owned or controlled by the said party of the first part." Further, in consideration of the payment of the said additional sum the first party agreed to submit to the second party "all improvements in apparatus and processes used in the electrical welding of rails of railroads and street railways made by the said party of the first part," the second party being given the right, if it so elected within four months after such submission, to prepare, file, and prosecute applications in the name of the first party for letters patent of the United States for such improvements. In addition, the second party was given the right in case of infringement of any of the said patents to bring action by its own attorneys in the name of the first party to restrain such infringement and "to recover damages, profits, penalties, and costs" and to retain such recoveries as its own.

The bureau in computing net income for 1917 and 1918 allowed no part of the first payment as a deduction from gross income, but proposed to capitalize same, together with the second payment, from the time the option to acquire a nonexclusive right and license was exercised, and then amortized the total payments over the remaining life of the patents.

The taxpayer contends that the down payment should be spread over the period from April 11, 1917, to May 1, 1919 (approximately 25 months), as expense and the proportionate part properly chargeable to 1918 allowed as a deduction for that year.

In the preamble to the agreement of April 11, 1917, it is stated in the first paragraph:

"The party of the second part is desirous of obtaining the sole and exclusive right and license under the aforesaid patents, etc. * * * and a nonexclusive license under the aforesaid patents, etc. * * *"

A reading of the agreement indicates quite clearly that two separate and distinct concessions were obtained thereunder by the second party: First, a sole and exclusive right and license under certain patents, pending patent applications, and patents thereafter issued pursuant to such applications, for a limited period within which to make tests of the practicability of the processes and devices covered by such patents and applications, for which right and license it made the first payment; second, a nonexclusive right and license similar to the first extending over the life of the patents, together with other rights, for which the taxpayer paid an additional sum. Such being the case, the bureau concluded that the first payment is properly to be allowed as expense, but prorated over the period from April 11, 1917, to May 1, 1919.

This same issue was considered by the bureau in the case of this taxpayer for 1917, and the recommendation outlined above is in accordance with the recommendation made for that year.

TRACK DONATIONS—ELGIN, JOLIET & EASTERN RAILWAY CO.

During 1918 this subsidiary received donations of track and grading costs which donations were included in taxable income. The item is accounted for under Interstate Commerce Commission practice as account 606, donations. Such donations have been held not to be taxable income, and therefore this amount should be excluded from income. (See cases of Liberty Light & Power Co., 4 B. T. A. 155 (acquiesced in); and Great Northern Railway Co., 8 B. T. A. 225 (acquiesced in, on this issue), citing *Edwards v. Cuba Railroad Co.*, 268 U. S. 628.)

DONATIONS—NATIONAL TUBE CO. ET AL.

For the year 1918 certain donations and contributions were claimed by the petitioners as deductions from gross income and disallowed by the bureau. The petitioners' representatives now propose, as a measure toward obtaining a settlement of the case without prosecution before a court, to withdraw their claim for the allowance as deductions of all the donations and contributions in question with the exception of donation made to the Young Men's Christian Association at Lorain, Ohio.

The facts and circumstances under which said donation was made are identical with the facts and circumstances relative to a similar donation made for the year 1917, the deduction of which was allowed by the bureau for that year.

In an affidavit executed June 13, 1928, by P. L. Fisher, assistant comptroller of the United States Steel Corporation, in support of the deduction claimed for 1917 he avers:

"The attendance of the National Tube Co.'s employees and their dependents as compared with the nonmembers of the National Tube Co. during the year was as follows:

Employees and dependents.....	21,047
Others.....	1,983

"Or over 90 per cent employees and dependents.

"Through this branch of the Young Men's Christian Association the employees of the National Tube Co. enjoyed privileges and have the use of facilities that would have to be otherwise provided through the welfare activities of the company. The National Tube Co. is by far the largest industry in Lorain, Ohio, and it is because of the participation of its employees and their families in the activities of the Young Men's Christian Association and their use of its facilities that the branch is maintained. The building is located immediately at the works on ground part of which was donated for the purpose by the company."

Article 562 of department regulations 45 provides:

"Donations made by a corporation for purposes connected with the operation of its business, when limited to charitable institutions, hospitals, or educational institutions conducted for the benefit of its employees or their dependents, are a proper deduction as ordinary and necessary expenses."

In re appeal of Poinsett Mills (1 B. T. A. 6), acquiesced in, the Board of Tax Appeals held that a donation made to a church was deductible. In this case the church was located in the mill village owned by the taxpayer, which village was inhabited solely by employees of the company and their dependents, and the congregation of the church was composed almost entirely of such employees and dependents.

In re appeal of Lihue Plantation Co. (Ltd.) (2 B. T. A. 740), acquiesced in, the board allowed deduction of a contribution of \$3,351 to a branch of the Young Men's Christian Association maintained within the taxpayer's plantation and on property owned by the taxpayer, which branch was operated exclusively for the benefit of the employees of this plantation. Also, in the case of Elm City Cotton Mills (5 B. T. A. 309), acquiesced in, contributions to an association doing welfare work among the taxpayer's employees were allowed as deductions.

As may be seen from the above decisions, so-called donations are deemed allowable as deductions where the contributor derives some direct benefit from the contribution or benefits accrue in a substantial measure to the contributor's employees and their dependents. From the facts recited in the affidavit of P. L. Fisher it appears clear that the National Tube Co. did derive direct benefits from the donation made in 1918 to the Young Men's Christian Association at Lorain, Ohio, inasmuch as it was relieved in a large measure of welfare work now deemed necessary to be conducted by large corporations in order to maintain efficient working forces, and many of its employees and their dependents received benefits and were permitted to use the facilities of the Young Men's Christian Association branch at Lorain, Ohio, free of charge. Such being the case the donation made to the Young Men's Christian Association at Lorain, Ohio, for the year 1918 has been allowed as a deduction, and all the other donations listed on the taxpayer's petition have been disallowed.

PROFITS FROM STATE LEASES—VARIOUS SUBSIDIARIES

The issue is common to the years 1919 and 1920 as well as 1917 and 1918. In the petition to the Court of Claims for 1918, and in the brief for that year, objection was raised to the bureau's action in including in consolidated net income a large sum described as the net income of six subsidiaries realized in 1918 from operation of iron-ore leases granted by the State of Minnesota or a political subdivision thereof. The objection, of course, is based upon the claim that the income is exempt from tax because arising not from a private business enterprise, but from employment by a state of instrumentalities in the performance of strictly governmental functions, i. e., obtaining revenues for the support of the State's public schools. Reliance is had by the taxpayer upon the following decisions:

Collector v. Day (11 Wall. 113), where the United States Supreme Court refused to sanction a tax imposed by the Federal Government upon the salary of a State executive officer.

Pollock v. Farmers Loan & Trust Co. (157 U. S. 429), where it was said that: "As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State." On rehearing, the court said, *inter alia*, that "it follows that if the revenue derived from municipal bonds can not be taxed (by the United States), because the source can not be, the same rule applies to revenue from any other source not subject to the tax," etc.

Ambrosini v. United States (187 U. S. 1), where it was held that the Federal Government lacked power to impose a stamp tax on surety bonds given a State under requirement of one of its laws.

Indian Territory Illuminating Oil Co. v. Oklahoma (240 U. S. 522), where the State attempted to tax a lease on tax-exempt Osage Indian lands, but the court held the property leased to be under the protection of the Federal Government, and that the leases "have the immunity of

such protection." The tax assessment by the State was held invalid, saying, in part: "A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them. If they can not be taxed as entities they can not be taxed vicariously, * * *."

Gillespie v. Oklahoma (257 U. S. 501), where the court held invalid an attempt by Oklahoma to tax the net income of a lessee of tax-exempt Indian lands, saying: "The same considerations that invalidate a tax upon the leases invalidate a tax upon the profits of the leases, and, stopping short of theoretical possibilities, a tax upon such profits is a direct hamper upon the effort of the United States to make the best terms that it can for its wards."

Daugherty, tax collector, v. Thompson (9 S. W. 99), in which the Texas Supreme Court held that school lands, when leased to raise an available school fund, are exclusively devoted to the use and benefit of the public as though covered by schoolhouses, and a tax on such leased lands diminishes the rental value thereof.

In *Metcalfe & Eddy v. Mitchell* (269 U. S. 514), which involved the Federal income tax for 1917, applied by the bureau to income paid a consulting engineer by a State, the court held that the fact of whether or not the tax constituted an interference by the Federal Government with the State governmental functions was one for determination under the facts of each case.

Frey v. Woodworth, collector (2 Fed. (2d) 725), where the rule was recognized and applied, to the effect that State instrumentalities used in the performance of governmental functions are exempt from taxation by the Federal Government. The case involved the Federal income tax for 1921 sought to be applied to wages of employees of a street railway owned by a municipality.

Panhandle Oil Co. v. Mississippi (277 U. S. 218), in which the court held unconstitutional a State sales tax on gasoline purchased by the Federal Coast Guard and veterans' hospital.

As opposed to the above decisions exempting from Federal taxation State agencies and the income or revenue therefrom, in the case of *Coronado Oil & Gas Co.* (14 B. T. A. 1214), acquiesced in. It was there held that income of a lessee of oil and gas bearing school lands of the State of Oklahoma from the sale of oil and gas produced from such leased lands was not exempt from the Federal income tax, upon the ground that the facts proven did not establish the taxpayer as an instrumentality of the State in its performance of a governmental function, so that a tax upon its income would constitute an interference with the exercise by the State of a governmental or sovereign power. Numerous relevant decisions by the courts were cited by the board. (See also *H. Oliver Thompson*, 17 B. T. A. 987, as to land leased to a city for a school site, and *Bear Canon Coal Co.*, 14 B. T. A. 1240.)

The *Coronado Oil & Gas Co.* has prosecuted a petition to the circuit court of appeals for review of the board's decision upon the issue of its claimed exemption from Federal income tax on income from its State school-land leases. In the case of *Bunn v. Willcutts* (35 Fed. (2d) 29) the circuit court of appeals affirmed the district court decision (29 Fed. (2d) 132), in holding exempt from Federal tax the gain on sale of municipal bonds. Notwithstanding the possibility of a decision by the courts in sustaining the claimed exemption, the United States Steel Corporation has waived its claim to exemption. The disposition of this item accords with the action heretofore taken in disposing of the tax for the year 1917.

TAXES IN INVENTORY—OLIVER IRON MINING CO.

The *Oliver Iron Mining Co.*, a subsidiary of the United States Steel Corporation, operated iron-ore mines in Minnesota and Michigan and paid to these States each year large amounts as taxes on its iron-ore properties. It has been the policy of the company for accounting purposes to charge these taxes on its books as a part of the cost of the ore produced in the year for which the taxes are payable. Since the company does not sell in a given year all of the ore it produces during that year, a part of each year's taxes has been included in the ore inventory on hand and unsold at the end of the year.

In determining the income to be reported on its tax return for any year the company deducts from income disclosed by the books the taxes included in the closing ore inventory and adds back to the book income the amount of taxes included in the opening ore inventory, these taxes having been deducted from income reported in the previous year's return by reason of a similar adjustment made in that year.

In the audit of the company's tax returns the bureau took the position that the taxes in question could, under the statute, be included in the inventories. Accordingly the adjustments made by the taxpayer with respect to these taxes were reversed and the taxable income held to be that shown by the books, so far as affected by this item.

Section 232 of the revenue act of 1918 provides that in the case of a corporation net income shall be computed on the same basis as is provided in subdivision (b) of section 212 or in section 226, which latter section relates only to cases where the taxpayer changed the basis of computing net income from a fiscal year to a calendar year, or vice versa.

Section 212 (b) provides that—

"The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may

be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the commissioner does clearly reflect the income, * * *."

The first provision by statute for use of inventories in the determination of income is found in section 203 of the revenue act of 1918, which states: "That whenever in the opinion of the commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income."

In article 1581, regulations 45, issued under the revenue act of 1918, it is said that "in order to reflect the net income correctly, inventories at the beginning and ending of each year are necessary in every case in which the production, purchase, or sale of merchandise is an income-producing factor."

Under date of November 10, 1927, a representative of the office of the general counsel, assigned to the consolidated returns audit division of the unit, passed upon the question here involved in connection with the determination of the company's tax liability for the year 1920 and held that the taxes in question should be included in the cost of goods manufactured and the proper proportion of these taxes included in the inventory of ore on hand and unsold at the end of the year. This opinion cites the decision of the Supreme Court in *United States against Anderson*, supra, since the reasoning contained therein was considered applicable to the present issue. The court said in effect that while section 12 (a) of the revenue act of 1917 appeared to require the income-tax return to be made on the basis of the actual receipts and disbursements, said section must be read with section 13 (d), which provides in substance that a corporation keeping its books on a basis other than receipts and disbursements, may make its return on that basis, provided it is one which reflects income. In other words, the various sections of the act must be read together.

This same reasoning may be applied with equal force to the provisions of section 234 (a) (3) of the revenue act of 1918 which authorizes the deduction from gross income of taxes paid for the taxable year, and section 212 (b) of the same act which provides for a basis of returns which clearly reflects income. As the taxpayer's inclusion of taxes in the cost of goods sold is sanctioned by good accounting practice and its net income is clearly reflected by this action, the taxpayer's contentions with respect to this item have been denied. Whether a court would sustain the Government's position would seem to depend largely upon the extent to which the court would recognize the accounting principle involved. It is admitted that there is considerable merit to the taxpayer's contentions since the statutes specifically name taxes as a proper deduction from income for the year of the tax and since the taxes here in question are levied on ore properties and not on production or on inventories, except possibly to the extent that taxes are higher on productive than nonproductive properties. The taxpayer's contention finds support in such decisions as the *Ottawa Park Realty Co.* (5 B. T. A. 474), *Westerfield v. Rafferty* (4 Fed. (2d) 590), *Fraser v. Commissioner* (25 Fed. (2d) 653, affirming 6 B. T. A. 346), acquiesced in, and *Central Real Estate Co.* (17 B. T. A. 776), although these decisions are not regarded as conclusive.

In view of the position taken by the bureau with respect to this issue, the taxpayer's representatives, while not receding from the position taken, agreed, as a measure toward obtaining a settlement of the case without prosecution before a court, to withdraw their claim for the allowance of the taxes as a deduction under section 234 (a) (3) of the revenue act of 1918.

DEPRECIATION ON FURNITURE AND FIXTURES, ETC.—UNIVERSAL PORTLAND CEMENT CO.

In accordance with the practice followed by all of the subsidiary companies of the United States Steel Corporation the cost of furniture and fixtures was charged to expense as expenditures were made. The bureau in its audit of the *Universal Portland Cement Co.* for 1917 and 1918 disallowed the expenditures for furniture and fixtures made in those years, then capitalized the same, and allowed depreciation thereon. In its audit for the years 1919 and 1920 the bureau followed the same procedure. No adjustment was made in any of these years for furniture and fixtures charged to expense in years prior to 1917. The *Universal Portland Cement Co.* was the only subsidiary company of the United States Steel Corporation on which any adjustment whatever was made by the bureau for furniture and fixtures charged to expense.

It is now the contention of the taxpayer's representative that if the undepreciated balance of the said furniture and fixtures account as at January 1, 1918, is not restored to invested capital, and the amount of depreciation sustained during the year 1918 allowed as a deduction, then the company should be permitted to follow the practice of charg-

ing expenditures for furniture and fixtures to expense during the year 1918.

In view of the long practice of all the subsidiary companies of the United States Steel Corporation with respect to the treatment of this item on their books, and the fact that the difference between the amounts allowable as depreciation on such assets and the amounts expended therefor during any of these years is comparatively small, it was found that no material benefit would result to the Government through requiring each of the subsidiaries of the United States Steel Corporation now to reinstate such expenditures in a capital account and then allow depreciation on furniture and fixtures as a deduction for each year in lieu of allowing the deduction of the expenditures for such assets. It is accordingly decided that the action of the bureau in disallowing as the deduction representing expenditures by the Universal Portland Cement Co. for furniture and fixtures in the year 1918 should be reversed. This action was agreeable to the taxpayer in the interest of closing the case and was consistent with the final closing of the case for the year 1917.

CONTINGENT FUND ACCOUNT

The bureau increased the 1918 taxable income reported for the Universal Portland Cement Co. by \$27,085.20 on the ground that it represented unreported income. The taxpayer alleges that no such sum was omitted from the return.

An examination of the facts in the case indicates that the bureau, in analyzing the contingent fund account on the company's books, erroneously shows the expenditures charged to that account of \$20,000 in excess of the actual charges. The error occurred by reason of the fact that the bureau auditor considered that a certain expenditure of \$20,000 representing a donation to the united war work fund was in addition to a certain sum instead of being included in it. This accounts for \$20,000 of the \$27,085.20 in controversy and reveals that the taxpayer is right in its contention to this extent.

The remaining amount, \$7,085.20, represents a debt charged off in a prior year as worthless, which was recovered in 1918. This item should have been reported as taxable income for 1918. (Art. 52, regulations 45.) The taxpayer was, therefore, wrong to this extent.

It follows from the above that the taxpayer's contention should be allowed to the extent of \$20,000, but denied as to the remaining \$7,085.20.

LOSS ON SALE OF STOCK TO EMPLOYEES OF UNITED STATES STEEL CORPORATION

During the years 1917 and 1918 the United States Steel Corporation purchased shares of its own capital stock and in 1918 resold such shares to its employees under a plan for securing the continued services of such employees, in order to maintain and increase the well-being of the United States Steel Corporation. It is disclosed that the said shares were purchased by the corporation in open market at the prevailing market price. The price at which the said shares were purchased was greater than the price for which the same were sold to the employees in 1918, and the taxpayer now claims a loss deduction in that amount.

It has been held repeatedly that a corporation derives no taxable gain and suffers no deductible loss through purchase or sale of its own capital stock. (See Articles 542 and 563, Regulations 45; Simmons & Hammond Manufacturing Co. (1 B. T. A. 803); Cooperative Furniture Co. (2 B. T. A. 165); Union Trust Co. of New Jersey (12 B. T. A. 688); A. R. M. 114 (4 C. B. 137).)

In view of the position consistently taken by the bureau that a corporation suffers no deductible loss through purchase or sale of its own capital stock, the taxpayer's representatives agreed, as a measure toward obtaining a settlement of the case without prosecuting same before a court, to withdraw the contention here considered.

LOSS ON SPECIAL COMPENSATION STOCK UNITED STATES STEEL CORPORATION

During the years 1917 and 1918 the United States Steel Corporation purchased shares of its own capital stock for the purpose of making distributions to its employees as additional compensation for services rendered. It is understood that these shares were purchased in the open market at the prevailing market price.

During the year 1918 the corporation actually distributed the said shares to certain of its employees as additional compensation for services rendered. The market value of the shares at the time they were distributed to the employees or the value placed upon them by the corporation's board of directors for purposes of distribution as additional compensation was less than the amount paid for such shares, and it is this difference which the taxpayer now claims as a deduction from gross income for the year 1918. It is not specified in the taxpayer's brief whether such amount is claimed as a loss resulting through a purchase and sale of stock or as additional compensation paid to employees.

As shown by the record the corporation purchased shares of its own capital stock and distributed them as additional compensation at a value lower than their cost to the corporation. It has been repeatedly held that a corporation derives no taxable gain nor suffers a deductible loss through purchase or sale of its own capital stock. (Simmons & Ham-

mond Manufacturing Co., supra; Cooperative Furniture Co., supra; and Union Trust Co. of New Jersey, supra.)

Section 234 (a) (1) of the 1918 law allows a deduction from gross income of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered. In a case where such a payment is made in property instead of cash, the fair market value of the property at the time of payment fixes the amount to be deducted. A. R. M. 114, supra, and Hub Dress Manufacturing Co. (1 B. T. A. 197 (acquiesced in)).

The same issue was involved in consideration of the 1917 tax of this corporation, which acquiesced in the bureau's action in disallowing a deduction for the difference between cost of the stock so distributed and an assigned value when distributed. The taxpayer has conceded the disallowance for 1918, in arriving at a settlement of the entire case without the necessity for a trial in court. The deduction claimed has been disallowed.

SO-CALLED MECHANICAL ERROR IN AUDIT

The taxpayer claims that the bureau erroneously failed to allow as a deduction from the 1918 gross income of the Oliver Iron Mining Co. the sum of \$16,215.19, said sum being a reasonable allowance for exhaustion or amortization of a leasehold owned by said company on the Aragon mine.

The amount allowed as depletion by the bureau in 1918 for the exhaustion of this leasehold was based on a bureau engineers' report dated July 5, 1925. In this report the bureau engineers approved the schedule submitted by the taxpayer without change. The valuations were based on an intercompany sale of this property by the National Tube Works Co. to the Oliver Iron Mining Co. on January 1, 1917. With respect to depreciation the bureau allowed a 5 per cent rate, which is consistent with the rate allowed on other mining plants owned by the Oliver Iron Mining Co.

Since the taxpayer has submitted insufficient evidence in substantiation of the claim, same has been denied.

OBSOLETENESS—ILLINOIS STEEL CO.

There was deducted from gross income in the consolidated return for 1918 an item under the heading of depreciation, but which in fact represented obsolescence and cost of dismantlement of certain plant facilities retired from operations, abandoned and scrapped in that year. The taxpayer subsequently claimed a deduction of a slightly larger amount for such abandonment, which was not allowed by the bureau because it was considered that the composite rate of depreciation allowed on this company's assets comprehended normal retirement losses such as these. The claim was based upon article 143, regulations 45, providing for a deduction on sudden loss of usefulness in a business of capital assets resulting from discontinuance of the business or permanent discard or abandonment of the assets. The amount was asserted to represent cost of the assets, less accrued depreciation.

The taxpayer contended that such losses were not comprehended in the composite depreciation rates applied by the bureau, and that if such losses are not allowed then the depreciation rate should be increased. Additional evidence has been submitted, showing that the deduction claimed was properly written off the books in 1918 and that the amount claimed includes dismantling and removal expense, no part of which has heretofore been allowed as a deduction from gross income. The taxpayer's computation of loss through obsolescence was based upon total costs, substantially all of which represented acquisitions in or prior to 1901. The rates of depreciation used by the taxpayer in computing the loss were the actual rates used upon its books and were comprehended in the composite rate allowed it by the bureau.

Since the taxpayer had failed to show the dates of acquisition of property acquired prior to 1901, it was agreed as a means toward settling the case to indulge in the presumption that the property had been fully depreciated prior to the taxable year and to allow obsolescence only on property acquired subsequent to 1901. Inasmuch as the facilities scrapped or abandoned in 1918 did not represent a whole plant, but only parts of several plants, instead of applying against the base the composite depreciation rates other rates comparable to those allowed other taxpayers engaged in the same line of business have been applied to the assets here involved.

INVENTORY ADJUSTMENTS

Illinois Steel Co.: The presumption of article 1582, regulations 45, etc., in cases of intermingled goods, that those on hand at date of inventory were those last received, is held to be rebutted here by facts that the material inventoried (ore) was graded as received, was distributed by grades, each shipment so distributed properly recorded in detail, and stored in V-shaped bins permanently closed at the bottom, so that the overhead grab buckets of necessity removed the latest receipts from the top of the bins. This treatment of inventories was consistent with the basis used in closing the 1917 case.

American Steel & Wire Co.: Two phases to the issue were involved, one the applicability here of the presumption of last goods received being those inventoried and the other a claimed reduction from cost to market value at December 31, 1918. As for the first point, evidence

was furnished to rebut the presumption cited, in article 1582, regulations 45, etc. (as amended by T. D. 3296, I-1 C. B. 40), the materials being ores, partly finished and finished goods. The book inventories were accepted as establishing proper cost. This action materially increased 1918 income and also reduced 1918 invested capital. With reference to reduction of inventories from cost to market at December 31, 1918, such a change was recognized by the bureau regulations, and upon submission of due proof of values the reduction has been allowed.

AMORTIZATION OF WAR FACILITIES

Section 234(a) (8) of the revenue act of 1918 provides:

"In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous acts of Congress as a deduction in computing net income. At any time within three years after the termination of the present war the commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined and the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;"

The determination of the "reasonable allowance" for amortization of war facilities involves in the ordinary case a consideration of many factors. The factors which have at various times been considered are too numerous to relate here, but a few of the most common, and all of which are here involved, are:

- (1) A determination of whether certain facilities were constructed, erected, installed, or acquired before or after April 6, 1917;
- (2) Assuming that the construction, erection, installation, or acquisition occurred on or after April 6, 1917, a determination of whether the facilities were constructed, erected, installed, or acquired for the production of articles contributing to the prosecution of the war;
- (3) Assuming a finding that the facilities did contribute to the prosecution of the war, a finding as to their disposition or use after the war;
- (4) Assuming that the facilities were sold, scrapped, or abandoned, prior to or during the postwar period, a determination of their sale price or scrap or junk value;
- (5) Assuming that the facilities retained some value in use to the business after the war, a determination of many factors in arriving at the "reasonable allowance" for amortization;
- (6) From a consideration of many factors a determination of the period of time commonly designated as the amortization period over which the amortization is to be spread;
- (7) After a determination of the amortization period a further determination as to how the amount of amortization is to be spread over the taxable years or periods falling within the amortization period;
- (8) A determination of what costs were incurred before the end of the amortization period;
- (9) A determination of what costs were incurred after the end of the amortization period which were necessary to prevent an economic loss on facilities partially constructed, erected, installed, or acquired during the amortization period and the proper period of spread of the amortization allowance with respect to the costs necessary for this purpose; and
- (10) In an affiliated group of corporations a consideration of the effect under both the 1917 and 1918 acts of transactions between the companies of the group with respect to facilities subject to amortization, which in turn often involves the much disputed question of the extent to which the affiliated group of companies is to be treated as a single unit, and the extent to which the separate legal entities of the members of the group are to be preserved.

A deduction for amortization was taken in the consolidated return for 1918, representing 25 per cent of the cost of assets subject to amortization, pursuant to article 184, regulations 45, and there was also a similar deduction taken in the 1919 return. According to the select committee's report (see *infra*), the amount of amortization claimed in Schedule A-19 of the 1918 return (committee's transcript, 1134 and 1138 was \$75,627,027.11, on costs of \$183,548,399.52. The amount of the revised claim is elsewhere stated to be \$83,482,961.18 (transcript, 1015 and 1063) on costs of about \$235,000,000 (p. 1082 of transcript), out of a total for all assets of \$1,871,261,897.76 (p. 1082 *id.*). The allowance recommended by the bureau early in 1924 was shown as \$55,063,312.60 (transcript, 1015, 1094, and 1112), on costs of \$198,570,624.94.

The pending petition to the Court of Claims asserts that the costs subject to amortization were \$227,504,706.83, and the deduction now claimed is \$86,562,115.89, as compared to \$75,534,459.52 claimed when

the 1918 return was filed. The amount of amortization claimed of \$86,562,115.89 was set up in the revised claim of 1922, upon which the bureau proposed to allow \$55,063,312.60 late in 1923 and early in 1924.

As the amount of \$55,063,312.60 allowance was determined, to some extent, by estimated production during the latter half of 1922, and during 1923, which was later found to have been greater, in fact, the matter was considered in a conference on January 24, 1924, between bureau engineers and auditors and an official of the taxpayer company, when it was agreed by them that no redetermination of the amortization claim would be made. Apparently the taxpayer took the position at the conference that if amortization were to be reduced, on account of an increase in the postwar production, then it would insist upon use of the high production in 1916, in determining war-time capacity, as an offsetting consideration.

The taxpayer appears to have been furnished copies of the conference memoranda of January 24, 1924 (see transcript, pp. 1055 and 1205), and with a supplemental report on one of the subsidiaries dated January 30, 1924, signed in the name of the deputy commissioner, by a chief of section. Based upon the language used in these memoranda and the report, as to the "final" closing of the amortization determination, the taxpayer has subsequently contended that the "allowance" then agreed upon became final and not subject to redetermination after March 3, 1924.

In 1924 and 1925 hearings were held by the (Senate) Select Committee on Investigation of the Bureau of Internal Revenue, pursuant to Senate Resolution 168, and on December 16, 1924, and later, during consideration of this taxpayer's case (pp. 1046, 1048, 1118, et seq.), statements were made indicating that the engineers' agreement was in no way consummated but the amortization allowance was still under consideration by the bureau when the case was taken up by the select committee, and the Income Tax Unit was preparing to request an opinion by the Solicitor of Internal Revenue on certain doubtful points affecting the amortization allowance. At the time of these hearings the select committee conceded an allowance for amortization of \$27,136,987.89 (transcript, pp. 1015, 1094).

Under date of January 5, 1925, the commissioner issued written instructions, reopening the amortization claims of this consolidated group, and directing use of the actual production figures for the last half of 1922 and the entire year 1923, but disallowing any amortization on transportation facilities used in connection with the various common carriers owned by the group, and without change in the formula previously used to determine the postwar value in use of facilities acquired during the war. The bureau then began such redetermination, over the protest of the taxpayer, and the Income Tax Unit submitted a number of questions to the Solicitor of Internal Revenue, under date of May 21, 1925, including the matter of the commissioner's authority to make any further determination of the amortization allowance.

Many of the issues so raised were based upon discussions before the select committee above mentioned, and they were considered in S. M. 4225, IV-2 C. B. 168, wherein it was ruled, *inter alia*, that the bureau did have authority to make the further adjudication of the amortization allowance. Some of the rulings therein made have subsequently been modified by board and court decisions, but in general the present allowances conform to the rulings in S. M. 4225, *supra*. This ruling forms the bureau's answer to the questions raised by the select committee as well as other questions raised by the Income Tax Unit. Subject to later modifications by court and board decisions, the ruling has been followed in the present adjustment of the case. Some 16 questions with answers are set forth concisely in this published ruling and need not be repeated here.

The present total deduction for amortization is \$7,242,161.69 less than that agreed upon at the conference of January 24, 1924. The taxpayer still insists that the allowance made at this conference and as stated in a subsequent letter to the taxpayer, constituted a final allowance and since the allowance became final prior to March 3, 1924, the commissioner is barred from redetermining amortization subsequent to that date, under the provisions of section 234 (a) (8) of the 1921 act.

The matter of reopening amortization is fully discussed in S. M. 4225, *supra*, and although the decision was to permit reopening, there is at least some doubt concerning the matter. (See dissenting opinion of Mr. Love in the case of Thomas P. Beal et al., Executors, 13 B. T. A. 677). The decision to reopen is, of course, to the Government's advantage.

It will be observed that section 234 (a) (8) makes no specific direction as to the manner of computing the "reasonable deduction" for amortization, and it furnishes no definite plan for apportionment of the amount to any particular taxable period or periods. The provision has been held to be a relief measure for taxpayers and therefore to be liberally construed in their favor. *G. M. Standifer Construction Corporation et al.* (4 B. T. A. 525) (acquiesced in); *Manville-Jencks Co.* (4 B. T. A. 765) (acquiesced in); and *John Polachek* (8 B. T. A. 1). The authorities so far available are in apparent agreement that in fixing upon an amortization allowance, the deduction must be the difference between the war-time cost and the postwar value of the facility. While the first element, cost, may not be difficult of determination, the

other element is one presenting great difficulty because of the standards of value to be applied and the variety of situations disclosed by the cases. *F. Burkhart Manufacturing Co.* (9 B. T. A. 1128).

Amortization having been claimed in the 1918 and 1919 returns, and in subsequent claims, the amount allowable is amply protected against the statute of limitations, by section 1209 of the revenue act of 1926.

After *S. M. 4225*, supra, held that since the bureau was free to re-determine the allowable amortization, the taxpayer was free to ask for an additional allowance, a claim was filed for additional amortization on other facilities costing approximately \$55,000,000. This claim was based principally upon costs incurred after the war period which were alleged to be necessary to complete facilities started during the war period. This class of expenditures is recognized as being subject to amortization. (See article 185 (b), Regulations 62.) The engineering section of the bureau advises that although this claim was believed to have considerable merit and would apparently have entitled the taxpayer to a considerable allowance, further field investigation would have been necessary, so that the taxpayer in order to avoid delay in closing its case, agreed to withdraw its claim in this respect.

As above indicated, the present allowance is \$7,242,161.69 less than that recommended in the conference report of January 24, 1924. This is due to a variety of causes, the principal of which may be summarized as follows:

The allowance recommended in 1924 was based on a consideration of the facilities as a whole, whereas the present allowance is based upon a consideration of smaller units pursuant to *S. M. 4225*, supra. The prior allowance was based on a comparison of average pre-war production (with the year 1916 excluded) with the average postwar production, including an estimate of production for part of the year 1922 and the year 1923. As opposed to this, the present allowance is based on a comparison of maximum war-time capacity (including that of the year 1916) with the maximum postwar production. This is contrary to *S. M. 4225*, supra, but consistent with the board's later decisions in the *Manville-Jencks Co.* case, supra, and the cases of *United States Refractories Corporation* (9 B. T. A. 671) (acquiesced in, as to this point), and *Nunn, Bush & Weldon Shoe Co.*, 15 B. T. A. 918. In this connection it may be noted that the *Manville-Jencks Co.* has instituted suit in a United States district court, subsequent to the board decision, seeking allowance of additional amortization.

Another distinction between the 1924 recommended allowance and the present proposed allowance is that amortization was granted to railroad companies in the prior allowance, whereas it is excluded in the present allowance pursuant to *S. M. 4225*, supra, and the commissioner's instructions of January 5, 1925.

The bureau engineers estimate that the principal difference between the amortization allowance recommended in 1924 and the present allowance is caused by an application of that part of the *Manville-Jencks Co.* decision, supra, relating to the basis of comparison of war-time production and capacity with postwar production. This principle is generally recognized as of doubtful soundness and has recently been rejected by the United States District Court of Connecticut in the case of the *Briggs Manufacturing Co. v. United States* (30 Fed. (2d) 962), on appeal in the United States circuit court of appeals, and by the District Court for the Western District of Pennsylvania in the case of *Diamond Alkali Co. against D. B. Heiner*, as yet unreported. Notwithstanding the two latter decisions, the Government has obtained the benefit of the board's decision in the present adjustment of the case. Also, as above indicated, the *Manville-Jencks Co.* has instituted suit in the United States district court, subsequent to the board's decision, seeking allowance of additional amortization so that the principles of the board decision here relied upon may yet be overruled in the same case.

SPREAD OF AMORTIZATION

At the outset it should be observed that Congress made no specific provision in the law for application of the deduction for amortization after the amount of the "reasonable deduction" had been determined. The method of allowing the deduction was then left to departmental regulation, subject to a reasonable interpretation of the congressional intent in providing the allowance to taxpayers.

Article 185 of Regulations 45 (original edition, approved April 17, 1919) provided that the amount to be extinguished by amortization should be spread in proportion to the net income between January 1, 1918, and the date applicable, as follows: (1) If permanently discarded, the date when discarded; (2) if still in use but certain to be permanently discarded before the last installment payment of the tax covered by the return, the date when the property will be so permanently discarded; (3) in the case of other property, April, 1919. In the revision of Regulations 45, approved January 28, 1921, article 185 appears as amended by Treasury Decision 3123 (4 C. B. 183), and provides that the amortization allowance shall be spread in proportion to net income (computed without benefit of the amortization allowance) between January 1, 1918 (or if the property was acquired subsequent to that date, January 1 of the year in which acquired), and either of the following dates: (1) If the property has been sold or permanently discarded, or will be so disposed of, within three years after the termi-

nation of the war, the date when the property was or will be sold or permanently discarded as a war facility; or (2) in the case of property retained in use, "the actual or estimated date of cessation of operation as a war facility." The title to article 185 as so amended is "Amortization Period," and the same appellation is found in article 185 of Regulations 62. These two articles were amended February 21, 1928, by Treasury Decisions 4133 and 4134, VII-1 (C. B. 236, 237), which called for a definite segregation of costs of facilities "during the amortization period," by taxable periods, except that 1917 costs should be added to the first taxable period ending after January 1, 1918.

These amendments then provided for determination of the allowances separately according to costs incurred in the several taxable periods falling partly or wholly with "the amortization period," and each allowance spread over that taxable period and the succeeding periods falling partly or wholly within "the amortization period," apportioned according to the net income of each taxable period falling within "the amortization period."

Article 185, Regulations 62, recognized that amortization is allowable on facilities that were never used to produce war articles, because not completed in time, and provided for an apportionment of amortization on facilities that were employed to produce war articles "over the respective accounting periods of the taxpayer, having reasonable regard to his gross and net income, and where separately ascertainable the income from the facilities upon which amortization is claimed, between January 1, 1918 (or if the property was acquired subsequent to that date, January 1 of the year in which acquired), and the actual or estimated date of cessation of operations as a war facility." This regulation further provided that where property was not completed in time for use in the production of articles contributing to the prosecution of the war, the allowance should be apportioned on the basis of the expenditures made on account of which amortization is allowed.

In the present case December 31, 1918, has been accepted as the date of cessation of operation as a war facility, in the case of all companies except one, which was engaged in performing a war contract until December 31, 1919. Therefore part of the amortization allowed on 1917 and 1918 costs of this company has been apportioned to 1918 and 1919.

There were also some minor costs incurred in 1920 by two of the companies amounting to approximately \$54,000 which, under article 185, regulations 62, have been apportioned to that year and the amount allowed thereon deducted in that year.

A number of cases have been decided by the Board of Tax Appeals as to the proper spread or apportionment of the amortization allowance, and reference will be made to some of them.

In the case of *Walcott Lathe Co.* (2 B. T. A. 1231), not acquiesced in, the board held that the cost of war facilities was not intended to be recovered by taxpayers over a long life of wear and tear, but should be recovered out of the articles produced by such war investment, or, in other words, out of the war profits produced by those facilities. This is the basis for considering the allowance as a special relief measure to benefit taxpayers who engaged in the production of articles to promote the progress of American arms. The entire allowance in that case, which was based upon a sale of the facilities in 1923, was apportioned to 1918.

In the case of *John Polachek* (3 B. T. A. 1051), the board held article 185 of Regulations 45 to be reasonable, and disallowed any amortization deduction for 1919 on war facilities acquired in 1918 but never used for war purposes. The board stated that it could see no reason for establishing an "amortization period" different from that allowed in the case where facilities were actually used for war purposes but abandoned at the end of 1918, and it held that said "period" was determined by the time of abandonment or stopping of production of war articles. All the amortization was apportioned to 1918, upon the holding that if there were not sufficient war profits to absorb the amortization deduction, then the deduction should not therefore be applied against peace-time profits. The effect of the decision was to deny the taxpayer any benefit from about half the amortization found allowable, and the dissenting opinion of three members of the board was in favor of spreading the allowance from 1918 to 1920, when the taxpayer began to use the facilities for peace-time purposes.

In the case of *G. M. Standifer Construction Corporation et al.*, supra, it was stipulated that "the amortization period" extended from January 1, 1918, to February 12, 1920, but the consolidated group had net income only in 1919 and 1920. The commissioner contended for an apportionment of the amortization allowance upon the basis of use, as shown by the gross income, and the taxpayer for use of net income. The board noted the statutory lack of direction as to apportionment but felt moved by the relief purpose of the law to sanction an apportionment upon the basis of net income before application of amortization.

In the case of *American-Hawaiian Steamship Co.* (7 B. T. A. 13), acquiesced in, the board again referred to the absence of express statutory provision for apportionment of the allowance, and after holding that "the amortization period" extended from February 15, 1918 (when the property was acquired) to February 28, 1919 (stipulated), set out to determine whether a reasonable result was obtained by the bureau's proposed spread. In that case fiscal years were involved, and

the board apportioned the deduction between two fiscal years upon the basis of net incomes of each taxable period, falling partly or wholly within the amortization period specified, without regard to calendar years.

The decision in the case of Pratt & Letchworth Co. (7 B. T. A. 792), acquiesced in, discloses that the taxpayer had a net loss in 1919 and a net income in 1918 in excess of its amortization allowance, and held that if any apportionment were necessary, the entire amount should be allocated to 1918.

The decision in the second Polachek case (8 B. T. A. 1) pointed out that the word "amortized" may denote a period of years, but does not require a spread over more than one year, depending upon the statutory intentment. After adhering to its views that this statutory provision was a relief measure, to be liberally construed, the board held that the deduction should all be applied against the war income from the amortized facilities, which was in 1918 only, and if there were no income remaining, after application of part of the allowable amortization, no further relief was possible.

In the case of United States Refractories Corporation, supra, the commissioner declined to acquiesce in that portion of the decision that apportioned to 1918, amortization on construction or acquisition costs that were not incurred or borne until 1919, but were necessary to complete construction begun in 1918 that would have been a total loss unless so completed. The board's action was based upon the ground that the war-time production did not continue beyond December 31, 1918, which was accepted as the termination of "the amortization period."

In the case of F. Burkhart Manufacturing Co., supra, the board said that the law intended "to permit a deduction against war profits of extraordinary expenditures for property for war purposes which the taxpayer would find useless upon the termination of the war," and the deduction might be applied to one year or to a longer period.

In the case of Williams Harvey Corporation (16 B. T. A. 752) a war facility or plant was begun in 1917 but not finished until 1918, when use began and lasted until 1923. The taxpayer had no net income in 1918 and a net loss in 1920. It had a net income in 1919. The board held that war burdens might exist beyond November 11, 1918; that the deduction for amortization depends upon "the actual relation between the income taxed and the war burdens"; that facilities acquired in 1918 but never used for war products, were not subject to amortization allowance from peace-time income, because the law was designed to relieve against burdens of extraordinary war income and high rates; and that as the facilities were put to use in 1918 and were not suitable for peace-time business, the entire deduction for amortization should fall in 1919, the only year having a net income. The end of the amortization "period" was fixed at October 1, 1920.

In the case of Belfast Investment Co. et al. (17 B. T. A. 213) the board referred to the amortization period as determined by the time when the taxpayer abandoned the facilities or ceased producing war articles.

In the case of Walter C. Palmer, trustee in bankruptcy, of the Racine Auto Tire Co. v. United States (67 Ct. Cls. 648), not appealed, the court held that the excess of an amortization allowance over the net income for 1918 might properly be allowed as a deduction for 1919 upon the ground that the provision in section 234 (a) (8) of the 1918 act gave the taxpayer a right to have the sums allowed as amortization deducted over the years, including 1918 and thereafter, until the entire amount of the allowance is exhausted. The excess of the amortization allowance over the 1918 net income was accordingly applied to reduce 1919 net income, as opposed to the board decisions in the two Polachek cases, supra.

The apportionment of the amortization in the present case has been made as follows:

Apportionment to—	
1918	\$40,889,605.59
1919	6,915,772.99
1920	15,772.33
	47,821,150.91

From the foregoing it will be observed that the amortization on 1919 costs has been applied to 1919 net income, and that on 1920 costs to 1920 net income. This is in harmony with the commissioner's refusal to acquiesce in the board's decision in the case of United States Refractories Corporation, supra.

The taxpayer has protested vigorously against this action but in order to settle the issue has agreed to withdraw its objections if the bureau will apply the amortization apportioned to 1919 and 1920 against only the income from Government contracts in those two years, which is taxable at 1918 rates under section 301 (c) of the revenue act of 1918. In this connection it may be observed that in the G. M. Standifer Construction Corporation case, supra, the board held that in computing the war-profits tax for 1920 the taxpayer group was entitled to apply the amortization apportioned to 1920 against the Government contract net income subject to 1918 rates. The board declined to apply any of the amortization applicable to 1920 against the taxpayer's net income from "peace-time work," while recognizing the propriety of apportioning various expenses as between Government contract and ordinary income.

The board further stated that the cost of war facilities for which the amortization deduction is allowed relates or appertains only to the income from Government contracts, and such war-cost deduction has no relation whatever to peace-time income from which a deduction for depreciation on such war facilities is allowed. The finding of facts in the decision (p. 537) does not show whether or not the facilities used to produce the so-called "peace-time" contract income were acquired after April 6, 1917, or for any reason would be subject to an amortization allowance independently of the Government contracts, but the inference is possible that if any such facilities were acquired after April 6, 1917, and were used to produce ships or other products aiding in the prosecution of the war or for transporting articles or men for war purposes, some of the amortization might properly be applied to the income accruing from that source, which would not be Government-contract income subject to 1918 rates.

In view of the conflicting theories as to the spread of amortization, it is believed that the bureau is justified in accepting the taxpayer's offer of settlement. If the amortization allowed on 1919 and 1920 costs were deducted from 1918 income instead of from Government contract income in 1919 and 1920 subject to 1918 rates, the refunds now proposed would be increased by approximately \$2,500,000, whereas if both the taxpayer's contentions were denied the present proposed overassessment would be decreased by only approximately \$500,000.

As part of the present consideration of a possible settlement of the pending litigation, Mr. F. T. Eddingfield, a member of the special advisory committee (who had not been previously connected with the case) was designated to make an independent study of the bureau engineers' determination of amortization. As a result of his investigation, Mr. Eddingfield concluded that the result reached by the bureau engineers was conservative so far as the interests of the Government were concerned and should be accepted. The members of the bureau committee, after a consideration of the case, concur in the result obtained.

It may be seen from the foregoing that the subject of amortization has been given an unusual amount of consideration in this case. It has been considered and reconsidered by the bureau on several occasions; in 1924 by the Senate select committee; thereafter the matter was covered in a detailed ruling by the then Solicitor of Internal Revenue as is set out in the published ruling S. M. 4225, supra; several board and court decisions thereafter appeared which affected the case and the matter was thereafter considered in the light of these decisions; again, the matter was carefully considered by the bureau special committee appointed to consider the case. These many considerations, made necessary by the prior investigation of the Senate and later board and court decisions, have contributed largely to the delay incident to a final disposition of the matter. On the other hand, through delay many of the uncertainties previously involved have been cleared up by the later board and court decisions.

INVESTED CAPITAL

Section 240 of the revenue act of 1918 provides:

"That corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the commissioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title and Title III, and the taxes thereunder shall be computed and determined upon the basis of such return."

Section 326 of the revenue act of 1918 provides:

"That as used in this title the term 'invested capital' for any year means (except as provided in subdivisions (b) and (c) of this section):

"(1) Actual cash bona fide paid in for stock or shares;

"(2) Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, at the time of such payment, but in no case to exceed the par value of the original stock or shares specifically issued therefor, unless the actual cash value of such tangible property at the time paid in is shown to the satisfaction of the commissioner to have been clearly and substantially in excess of such par value, in which case such excess shall be treated as paid-in surplus: *Provided*, That the commissioner shall keep a record of all cases in which tangible property is included in invested capital at a value in excess of the stock or shares issued therefor, containing the name and address of each taxpayer, the business in which engaged, the amount of invested capital and net income shown by the return, the value of the tangible property at the time paid in, the par value of the stock or shares specifically issued therefor, and the amount included under this paragraph as paid-in surplus. The commissioner shall furnish a copy of such record and other detailed information with respect to such cases when required by resolution of either House of Congress, without regard to the restrictions contained in section 257;

"(3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;

"(4) Intangible property bona fide paid in for stock or shares prior to March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per cent of the par value of the total stock or shares of the corporation outstanding on March 3, 1917, whichever is lowest;

"(5) Intangible property bona fide paid in for stock or shares on or after March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per cent of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year, whichever is lowest: *Provided*, That in no case shall the total amount included under paragraphs (4) and (5) exceed in the aggregate 25 per cent of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year; but

"(b) As used in this title the term 'invested capital' does not include borrowed capital.

"(c) There shall be deducted from invested capital as above defined a percentage thereof equal to the percentage which the amount of inadmissible assets is of the amount of admissible and inadmissible assets held during the taxable year.

"(d) The invested capital for any period shall be the average invested capital for such period, but in the case of a corporation making a return for a fractional part of a year it shall (except for the purpose of paragraph (2) of subdivision (a) of section 311) be the same fractional part of such average invested capital.

"The average invested capital for the pre-war period shall be determined by dividing the number of years within that period during the whole of which the corporation was in existence into the sum of the average invested capital for such years."

The same general method of computing consolidated invested capital has been adopted for 1918 as was used for 1917 and was fully explained to the Joint Committee on Internal Revenue Taxation at that time. The issue has two main aspects, one as to the correct valuations of assets at various dates, and the other as to the correct theory or fundamental basis of determining consolidated invested capital, under the law. The situation here involved is a so-called class A affiliation, a parent and its subsidiaries, where one corporation owns or controls the stock of the subsidiary, and grows out of the following transactions:

Prior to 1901 there had occurred a series of changes in the domestic manufacture of steel, such as from the making of Bessemer steel to open-hearth steel, and the so-called integration of operations, or "rounding-up plants" to permit continuous processes. Improvement of processes further increased the need of available ore supplies, or reserves, with the result that a number of the large steel manufacturing concerns had begun to acquire mines and transportation facilities, by boat and by rail, in the years from 1898 to 1900. Marketing areas, as well as mines, were considered important.

In September, 1898, the Federal Steel Co. was incorporated, with a capitalization of almost \$100,000,000, representing a consolidation of the Illinois Steel Co., the Lorain Steel Co., the Minnesota Iron Co. (owning ore, a railroad, and a fleet of ore vessels), and the Elgin, Joliet & Eastern Railway Co. In December, 1898, the principal tin-plate manufactories "integrated," or consolidated, to form the American Tin Plate Co., with a capital of \$46,000,000 issued stock, and a month later the American Steel & Wire Co. was formed by a consolidation of all the leading wire-product manufacturers, with a capital of \$90,000,000 in stock. In February, 1899, 12 per cent of the ingot production of the country consolidated into the National Steel Co., with issued capital stock of \$59,000,000. The National Tube Co. was formed by June, 1899, by large concerns making various kinds of tubes and pipes, and had a capital stock issued of \$80,000,000. In March, 1899 (or in 1900), the makers of sheet steel in large tonnage combined to form the American Sheet Steel Co., of a capital of \$49,000,000 issued stock, and in April, 1899, the American Steel Hoop Co. was formed of the leading makers of hoops, bands, and cotton ties, with a capitalization of \$35,000,000. In April, 1900, the American Bridge Co. was formed, with a capital of \$61,000,000 issued stock. In March, 1900, was organized the Carnegie Co. of New Jersey, with a capitalization of \$320,000,000 (half in bonds), to take over the old Carnegie Steel Co. (Ltd.), partnership, the Carnegie Steel Co. (Pennsylvania corporation), which became the operating company, the H. C. Frick Coke Co., and the Bessemer & Lake Erie Railroad Co. At that time the Carnegie interests controlled 18 per cent of the country's ingot production. The Shelby Steel Tube Co. was incorporated in February, 1900, with \$13,150,000 issued stock, and had substantial control of the seamless-tube industry.

Aside from the avoidance of costly competition and the economic advantages of integration of the various operations of the business, the trend toward large consolidations was accompanied by great increases in capitalization. Heavy stock commissions were also received by the promoters of these consolidations as their compensation. For example, the promoters of the American Tin Plate Co. received \$10,000,000 of common stock; at least \$5,000,000 in securities went to the promoters of the National Steel Co. and the American Steel Hoop Co.; \$11,600,000 in common stock went to the promoters of American Steel & Wire Co.; \$20,000,000 common stock to promoters of the National Tube Co.; and at least \$7,250,000 of common stock to the American Bridge Co., promoters and bankers. In the formation of the Federal Steel Co. the underwriting syndicate received \$8,400,000 com-

mon stock and \$5,680,000 preferred stock, for \$4,800,000 cash and their services. (Part I of Report of the Commissioner of Corporations on the Steel Industry, 1911, mentioned below.)

In the years next preceding 1900 there existed in the steel industry so much wasteful and destructive competition that some of the leaders, including Andrew Carnegie, began to consider the advisability of merging the two corporations above named. All these men, except Mr. Carnegie, later became directors of the United States Steel Corporation. Other purposes instigating the formation of the present corporation were the economies expected to result from specialization of production, as to processes and kinds of articles manufactured, improved transportation and distribution, both of raw materials and finished products, realignment of factories, changed methods of mining ore, stabilization of prices, reduction in supervision costs, etc., and the building up of a large and profitable foreign market. At this time, in 1900, Mr. Carnegie was desirous of retiring from active participation in the steel business, and was anxious to sell. There had been friction and litigation between him and the other leading partner (H. C. Frick) in the old Carnegie partnership.

All the above-named corporations were later merged into the present United States Steel Corporation, which was organized on April 1, 1901, as a holding company. At that time its capitalization (including bonds) was about \$1,402,000,000, consisting of the following:

Preferred stock.....	\$510,000,000
Common stock.....	508,000,000
Corporate bonds.....	303,000,000
Underlying and miscellaneous obligations.....	81,000,000
	<hr/>
	1,402,000,000

The underwriting syndicate received for their services securities which netted them in cash some \$62,500,000. The newly organized combination possessed ore, coal, limestone, natural gas, railway and steamship companies, blast furnaces, steel works, rolling mills, finishing plants, etc., and was a thoroughly integrated business concern. At organization it controlled about two-thirds of the country's production of crude steel, and between one-half and four-fifths of the principal rolled-steel products. The steel works acquired had an annual capacity of over 9,400,000 tons of crude steel and over 7,700,000 tons of finished rolled-steel products; several railroads, with over 1,000 miles of main track and a large mileage of second track and sidings; a fleet of 112 Lake ore vessels; iron-ore reserves in the Lake region then estimated at about 500,000,000 to 700,000,000 tons; more than 50,000 acres of coking-coal lands, besides a great acreage of other grades of coal; and numerous miscellaneous properties. There were acquired in 1901, shortly after April 1, the following concerns: The American Bridge Co., above mentioned, the Lake Superior Consolidated Iron Mines, the Bessemer Steamship Co., and the Shelby Steel Tube Co. Three important competing concerns were acquired after 1901, the first being the Union Steel Co., in 1902, which concern had absorbed the Sharon Steel Co.; next the Clairton Steel Co. in 1904; and the Tennessee Coal, Iron & Railroad Co. during the panic of 1907.

The 1901 consolidation was handled by the J. P. Morgan & Co. syndicate, which agreed to deliver at least 51 per cent of the stocks (and in fact delivered practically all of such stocks) of the various companies to be acquired, in exchange for stocks and bonds of the new United States Steel Corporation. The members of the syndicate paid in cash \$25,000,000, for which, together with their services, they received \$130,000,000 par value of new stock, half being preferred and half common. They sold this stock to net them the \$62,500,000 in cash above stated.

On January 28, 1905, Congress directed the Secretary of Commerce and Labor to investigate the steel and iron industry of the country with a view to ascertaining to what extent the United States Steel Corporation controlled the output and prices of finished product made by independent companies dependent upon it for their raw material, and to report any restraints by it of commerce, foreign or domestic. A report was subsequently made by the Commissioner of Corporations, Department of Commerce and Labor, of which Part I, dealing with the taxpayer herein, was transmitted to the President on July 1, 1911. On October 26, 1911, the Attorney General, pursuant to power vested in him by section 4 of the so-called Sherman antitrust law (the act of July 2, 1890, ch. 647, 26 Stat. L. 209; Comp. Stat. 1913, sec. 8823 et seq.), instituted an action to dissolve the United States Steel Corporation and affiliated companies and to enjoin permanently their officers and stockholders. The decision by the district court of New Jersey (by four circuit judges) on June 3, 1915, gives considerable data on the history and workings of the consolidated group. (See 223 Fed. 55.) The decision of the case by the Supreme Court sheds little or no light upon the facts of interest in the present issue. (251 U. S. 417.)

The report of the Commission of Corporation is largely concerned with the capital investments of the several principal corporations in the present consolidated group, and the valuations of assets in 1901 there set forth have been largely used in determining the statutory invested capital herein. Valuations were arrived at, in said report, by three methods. By assuming that the tangible assets of the constituent companies were about equal to the preferred stock, which was usually equal to the cash purchase price offered by the promoters, the common stock

being issued as a bonus, and after adding surplus earnings and cash paid in, a total valuation of the tangible assets at April 1, 1901, is shown to be about \$676,000,000. Based upon the market values of the securities issued by the various concerns, a total value for all assets, including intangible merger values in the consolidations prior to the United States Steel Corporation, would amount to \$793,000,000. The third method of valuation, which was preferred by the report, was a detailed valuation of assets by departments or classifications. These figures showed a total value for tangible assets of \$682,000,000, in which the ore properties were fixed at \$100,000,000, whereas the possessor corporations were claiming ore values alone of \$700,000,000. Thus, by disregarding so-called merger or integration value, or monopolistic advantages in controlling the bulk (stated as 75 per cent of lake ores) of the iron ore of the country, increased earning power through elimination of competition, etc., the tangible assets represented about 50 per cent of the total capitalization of the United States Steel Corporation. The valuations adopted in the report above mentioned are certainly ultraconservative, especially from a tax point of view, for the avowed purpose was to determine the correct earning power or earnings of the group, based upon actual investment. (Page XX, Introduction, Commissioner of Corporations' Report.)

The taxpayer's claimed value of \$700,000,000 for the ore properties was set up in certain litigation in July, 1902, when a court suit was pending, involving a proposed conversion of a portion of its preferred stock into bonds. The difference in these two valuations represented estimates of prospective values resulting from combinations, compared to market or sale values of separate ore properties at the time (1901). The Commissioner of Corporations' report above cited showed a tangible investment in 1910 of some \$1,187,000,000, resulting from the policy of investment of accrued earnings in additional tangible properties, especially ore leases. The classifications were valued at 1901 as follows:

Manufacturing, including blast furnaces.....	\$250,000,000
Transportation facilities.....	91,500,000
Coal and coke.....	80,000,000
Natural gas.....	20,000,000
Limestone.....	4,000,000
Working assets.....	136,500,000
Ore deposits and leases.....	100,000,000
	<hr/> 682,000,000

Based upon the annual earnings for the period 1901 to 1910, as shown on page 53 of the report, the tangible asset valuation of \$682,000,000 was almost equalled by the earnings for the first six years of operation, thus indicating a material intangible value acquired at organization in 1901. And during that period competition was not stifled by the United States Steel Corporation. (P. XXIII of letter of transmittal of report, p. 56 of the report, and pp. 96 and 97, of 223 Fed. Rept.) The taxpayer's proportion of trade increase during the decade from 1901 was less than that of its competitors, but during that period it materially strengthened its position in the steel business, as to efficiency and capacity, through developing control of raw materials, transportation, and distribution agencies, and manufacturing processes.

On April 1, 1901, within a few weeks after the papers of incorporation had been taken out, the United States Steel Corporation was definitely launched. On that date, or immediately thereafter, it acquired the stocks and bonds of various corporations in 13 constituent groups, in exchange for its own preferred and common stocks and bonds. Shortly thereafter—about June 1, 1901—one more, the Shelby Steel Tube Co. group, was added. Of the 14, the stock of 6 were actively traded in on the New York Stock Exchange, i. e., Federal Steel Co., American Steel & Wire Co., National Tube Co., National Steel Co., American Tin Plate Co., and the American Steel Hoop Co. The American Bridge Co. was regularly quoted on the outside market and the American Sheet Steel Co., though not actively traded in, was quoted on the Pittsburgh market. Shelby Steel Tube Co. was quoted on the Chicago Stock Exchange. There were no market quotations for the remaining companies; i. e., Carnegie Co., Lake Superior Consolidated Iron Mines, Oliver Iron Mining Co., Pittsburgh Steamship Co., and Bessemer Steamship Co.

In determining the value of the stocks acquired by the United States Steel Corporation in 1901, the commissioner of corporations took market quotations for the stocks of the nine companies on which quotations were available, using as the period for quotations the years 1899 and 1900 in order to exclude any merger, integration, or monopolistic values that might be reflected in quotations nearer April 1, 1901. As to the remaining companies, quotations for the stocks of which were not available, the commissioner of corporations used what he considered the best information available. Carnegie Co. stock was valued at par based on sales of 13 shares found to have been made at that price in February, 1901; Lake Superior Consolidated Iron Mines stock was valued at \$75, representing the highest asked price in 1900; the one-sixth interest in the Oliver Iron Mining Co. and the Pittsburgh Steamship Co. (the other five-sixths having been secured in the purchase of the Carnegie Co.) was arbitrarily placed at the par value of the preferred stock of the United States Steel Corporation issued therefor, no value whatever being attributed to the United States Steel Corporation common stock of an equal par value which was also issued therefor. The Bessemer Steam-

ship Co. stock was valued at \$8,500,000, since it was acquired through the issue of that amount of purchase money obligations, these being issued by the Pittsburgh Steamship Co.

The values thus established by the commissioner of corporations are the values which the Bureau of Internal Revenue used in determining the invested capital of the United States Steel Corporation for the years 1917, 1918, 1919, and 1920. It was against the use of these values that the company so strenuously protested at the time the 1917 case was up for final settlement.

The taxpayer argued that, for tax purposes, there was no justification for using quotations prevailing in 1899 and 1900 as a test of the value of the stocks at the time acquired, since section 207 of the 1917 act and section 326 of the 1918 act provide that there shall be allowed in invested capital the "Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, at the time of such payment." (Italics supplied.) The tangible property with which we are here dealing, according to the United Cigar Stores Co. decision (infra), is the stock of the constituent companies acquired by the United States Steel Corporation in 1901. The taxpayer objected even more strenuously to the use for invested capital of the commissioner of corporations' method of valuing the Carnegie Co. stock and the Lake Superior Consolidated Iron Mines stock.

The taxpayer submitted a proposal in the form of a schedule setting forth what it believed to be the actual cash values of the securities acquired in 1901. This proposal increased the values determined by the commissioner of corporations in the amount of \$185,430,555, summarized as follows:

1. Federal Steel Co.....		
2. American Steel & Wire Co.....		
3. National Tube Co.....		
4. National Steel Co.....		
5. American Tin Plate Co.....		
6. American Steel Hoop Co.....		
7. American Bridge Co.....		
8. American Sheet Steel Co.....		
9. Shelby Steel Tube Co.....		
10. Oliver Iron Mining Co., one-sixth interest.....		
11. Pittsburgh Steamship Co., one-sixth interest.....		
12. Bessemer Steamship Co.....		
13. Lake Superior Consolidated Iron Mines.....		
14. Carnegie Co.....		
		<hr/>
		\$35,771,271
		<hr/>
		No change.
		<hr/>
		32,859,284
		<hr/>
		116,800,000
		<hr/>
		185,430,555

The increase of \$35,771,271 shown for the first eight companies represents average market quotations between January 1 and April 1, 1901. During this period there was an increase in value of the preferred stocks of all eight companies, an increase in value of the common stocks of six companies, and a decrease in value of the common stocks of two companies as compared with the average quotations for the years 1899 and 1900, which were used by the commissioner of corporations. In checking the taxpayers' quotations certain differences arose as to the proper procedure to be followed in arriving at daily averages, also certain errors were found, the revision of which reduced the values shown by the taxpayer in the amount of \$2,023,983. These corrections the taxpayer conceded. Furthermore, it was found that by using the five months' period prior to April 1, 1901, there would be little difference in the result, but by using six months there would be a reduction of approximately \$16,000,000. As a step toward a final settlement the taxpayer agreed to a further reduction of its claimed value by \$8,000,000, representing the use of approximately a 5½-month prior period, which was accepted. This reduced the additional value to be allowed for these eight companies to \$25,747,288.

It will be noted that taxpayer's schedule proposed no change in the valuations assigned by the commissioner of corporations to the stocks of the Shelby Steel Tube Co., the Oliver Iron Mining Co. (one-sixth interest), the Pittsburgh Steamship Co. (one-sixth interest), or the Bessemer Steamship Co. In the case of the stock of the Shelby Steel Tube Co. the only quotations available were a few reported on the Chicago Stock Exchange. This stock was not acquired by the United States Steel Corporation until about June 1, 1901, at which time the common and preferred stocks of the United States Steel Corporation itself were being actively traded in on the New York Stock Exchange, the common selling at about \$50 and the preferred at about \$100. On the basis of the market price of the stock issued in exchange for the Shelby Steel Tube Co. stock, the value of the Shelby stock would be slightly lower than the value assigned by the commissioner of corporations, which apparently used the average of the quotations for the year 1900 and for the first few months of 1901.

In valuing the one-sixth interest of the Oliver Iron Mining Co. and of the Pittsburgh Steamship Co. the taxpayer could offer no better basis than that used by the commissioner of corporations. As to the Bessemer Steamship Co., no purpose would be served in changing the commissioner of corporation's valuation, since this stock was acquired by an issue of purchase-money obligations, which represents borrowed capital and not invested capital.

The commissioner of corporations valued the stock of the Lake Superior Consolidated Iron Mines at \$22,060,420, based on \$75 per share, which was the highest asking price found among the very meager quotations existing during the year 1900. The physical assets owned by

this company and its subsidiaries consisted principally of valuable iron-ore properties in the Lake Superior region and of a very valuable railroad, the Duluth, Missabe & Northern Railway Co.

The commissioner of corporations valued the entire physical properties (not including current assets) owned by all of the companies acquired by the United States Steel Corporation in 1901 at \$545,500,000. The Bureau of Internal Revenue apportioned this value among the various companies and used the values so allocated for depletion and depreciation purposes. The amount so apportioned to the Lake Superior Consolidated Iron Mines and its subsidiaries was \$64,901,987. Using this as a basis, and deducting reserves and liabilities, a net value of \$54,919,713 is found, which amount the taxpayer proposes to use as the fair value of the Lake Superior Consolidated Iron Mines stock at April 1, 1901. In determining the profit derived from an intercompany reorganization which occurred in 1913, the bureau used \$54,919,713 as the cost of this stock in 1901, thereby limiting the profit which would have been restored to invested capital under L. O. 1108, III-1 C. B. 412, had the stock been valued at \$22,060,429 on the basis of \$75 per share. For each share of stock of \$100 par value the stockholders in Lake Superior Consolidated Iron Mines received in exchange in 1901, \$135 par value preferred stock and \$135 par value common stock in the United States Steel Corporation. Based on the market quotations of United States Steel Corporation stock immediately after April 1, 1901, each share of Lake Superior Consolidated Iron Mines stock was worth \$188, and the total shares were worth more than \$55,000,000. Since this is so, and since the bureau had used the value claimed by the taxpayer for purposes other than invested capital in 1913, the taxpayer's proposal to value this stock at \$54,919,713 was accepted.

With reference to the securities of the Carnegie Co. acquired at organization April 1, 1901, consisting of \$159,450,000 par value of bonds and \$160,000,000 par value of stock (common), Andrew Carnegie owned 60 per cent of the latter, and there were practically no sales to establish a market value. The Carnegie Co. bonds were being dealt in at \$105. For his stock, of par value \$96,000,000, he received United States Steel Corporation bonds of par value of \$144,000,000, which were callable at \$115. Based upon the ratio of par values, the Carnegie Co. stock has been valued at \$150 per share. The bonds of the two corporations were exchanged on a par basis. One of the conditions imposed by Carnegie upon his relinquishment of control was that the minority (40 per cent) stockholders should receive for each share of their stock, par \$100, common stock of a par value of \$150 and preferred stock also of a par value of \$150 in the United States Steel Corporation. Based upon average market quotations of United States Steel Corporation stock for the first year after April 1, 1901, each share of Carnegie Co. stock was worth about \$208. The taxpayer's proposal was to value the Carnegie Co.'s stock at \$173, which figure is the weighted average obtained by applying \$150 to Mr. Carnegie's 60 per cent interest and applying \$208 to the 40 per cent minority interest. The value of \$150 per share was finally agreed upon for 1917, based upon the conservative value of \$150 fixed as the basis of exchange in the case of Carnegie's own stock when he was a willing seller. This reduced the additional value claimed by the taxpayer for this stock from \$116,800,000 to \$80,000,000 and establishes an average value of \$50 per share for United States Steel Corporation stock issued therefor, whereas such United States Steel Corporation preferred was being sold at about \$94.50 and common at about \$44 per share after April 1, 1901.

There was a claim made for 1917, as well as for 1918 and later years, that there should be included in invested capital an amount of \$7,972,500, representing the excess of the alleged cash value of Carnegie Co. bonds over the par value of the United States Steel Corporation bonds, which were exchanged upon a par basis. The taxpayer's claim has been disallowed, whether as paid-in surplus when not based on stock issued, as a capitalized bargain, or as bond premium.

For the purpose of making a comparison it might be here stated that (after making certain other adjustments which will be discussed subsequently) \$487,429,362 was the amount finally settled upon as the 1901 value of the stocks of the 13 companies for which approximately 8,890,000 shares of United States Steel Corporation stock were issued, but not including Bessemer Steamship Co. stock nor Mr. Carnegie's 60 per cent interest in the Carnegie Co., which were exchanged for bonds. This gives the United States Steel Corporation stock so issued an average value of \$54.83 per share for invested capital purposes, the remaining \$45.17 between that and par being considered "water" and as such excluded from invested capital. This does not include some 1,295,000 shares issued to the syndicate for \$25,000,000 in cash, plus their services. For this issue only the \$25,000,000 in cash has been allowed in invested capital; nothing was allowed for the services. In other words, for each share so issued about \$19.30 was allowed in invested capital and the remaining \$81.70 was excluded. In all, about 10,185,000 shares of United States Steel Corporation stock were issued, for each of which only \$50.50 was allowed in invested capital, the remaining \$49.50 being excluded. This compares very favorably with the price of \$50 per share established in the Carnegie transaction. Stated in still another manner, it may be said that the allowance

amounted to the same thing as if the preferred stock had been included in invested capital at par and the common had been included at \$0.70 per share, the remaining \$99.30 being "water."

Aside from such questions of valuation of assets above discussed, there must be considered the fundamental basis of determining invested capital when corporations "make a consolidated return of net income and invested capital" and the "tax is assessed upon the basis of a consolidated return," within the provisions of section 240 of the revenue act of 1918. Owing to lack of specific instructions in the statute itself, a number of proposed theories as to the proper method of fixing consolidated invested capital have arisen, but none has yet attained the support or finality of a comprehensive decision by the United States Supreme Court. The report on the 1917 profits tax of the United States Steel Corporation, discussed the so-called "legal theory" of consolidated returns and the "accountant's theory" of the same, quoting from the board's views expressed in the cases of Gould Coupler Co. (5 B. T. A. 499, 513, 515, 516, 517); Farmers Deposit National Bank, etc. (5 B. T. A. 520, 526, 527), not acquiesced in; and H. S. Crocker Co. (5 B. T. A. 537, 541), not acquiesced in. The board, in the first case, stated that by "legal theory" of consolidation is meant the view that "consolidation" is a matter of procedure, and consolidated capital and net income should be found by adding the separate amounts applicable to each of the affiliated corporations, whereas the accountant's or economic unit theory would determine consolidated income and capital by eliminating all intercompany "transactions and relationships," thus obtaining a balance sheet and profit and loss statement showing the situation as though it were a single business. The board took the view that the legal theory did not accomplish the results desired by Congress, including the circumvention of such intercompany dealings and practices as would understate taxable net income or inflate invested capital, but, while not accepting the accountant's theory unqualifiedly, held that the computation of the tax as a unit required the determination of "a single composite invested capital for the group from which duplications and intercompany obligations would have been eliminated," and the determination of a consolidated net income after elimination of all intercompany losses, profits, or other transactions affecting income.

In the Farmers Deposit National Bank case, supra, the board held that in a consolidated return the identities of the affiliated companies are overridden and merged and welded together just as effectively as though they existed under a single charter; and that the separate existences ceased and became fused into an economic unit having the attributes of a single taxpayer. In the H. S. Crocker Co. case, supra, the board said that in a consolidated return corporate lines should be disregarded, and further stated that under the affiliation provisions of the statute the acquisition by one company of the stock of another, thereby creating affiliation, creates no additional investment in the affiliated group. So it was ruled also in the case of Burke Electric Co. (5 B. T. A. 553).

Since the United States Steel Corporation acquired as at April 1, 1901, the stocks of corporations which had previously acquired the stocks of other corporations, so that the stocks of over 100 corporations came into the newly formed parent company, directly or indirectly, the consolidated invested capital of the group, according to the taxpayer's contention, would represent the sum of the invested capitals of all the members of the group, separately determined, and there would be no allowance for duplication or so-called pyramiding of capitals. This contention is made in the petition to the Court of Claims for 1918.

Section 240 of the revenue act of 1918, providing for consolidated returns of net income and invested capital, stipulated that such returns should be filed "under regulations to be prescribed by the commissioner with the approval of the Secretary." This act was approved on February 24, 1919, and prior thereto departmental regulations relative to consolidated returns for 1917 had been promulgated. (Arts. 77 and 78, Regulations 41, approved early in 1918, and T. D. 2662, approved March 6, 1918.) Paragraph F of Treasury Decision 2662 ruled that assets of subsidiary corporations should be valued at the dates when acquired by the subsidiaries and not as of the date when their stock was acquired by the parent or controlling corporation, but after passage of the 1918 law this paragraph was superseded or amended by Treasury Decision 2901, approved July 29, 1919, so as to prescribe that the cash paid for the subsidiary's stock should fix the value "of the property acquired," and where a subsidiary corporation's stock was paid in for the stock in the parent company, the amount of capital to be included in the consolidated capital, in respect to the subsidiary, was to be computed in the same manner as if the latter's net tangible assets and the intangible assets had been acquired instead of its (subsidiary) stock. This general rule then first appeared in Regulations 45, the first edition of which was approved on April 16, 1919, as Treasury Decision 2831. Notwithstanding that section 325 (a) of the revenue act of 1918 expressly provided that "tangible property," as used in the act meant stocks, bonds, notes, etc., article 868 of those regulations, which was later followed in principle by Treasury Decision 2901, provided that where a subsidiary's stock was paid in to another corporation for the latter's own stock, so that they became affiliated, the consolidated

invested capital should be computed in respect of the subsidiary company acquired, in the same manner as if the net tangible assets and the intangible assets had been acquired instead of the subsidiary stock.

These regulations were being given full force and effect by the bureau when section 1331 of the revenue act of 1921, approved November 23, 1921, was enacted, and on August 24, 1922, Treasury Decision 3389 was approved, reiterating the above general rule as applicable to 1917 consolidations. Under this presumption of the regulations the bureau was auditing cases and applying the limitation on intangibles acquired for stock (20 per cent by sec. 207 of the 1917 law, and 25 per cent by sec. 326 of the 1918 law) to subsidiaries having previously acquired intangibles, where the subsidiaries' stocks were paid in for stock in their parent companies. Eventually, however, a test came of the merits of that presumption, in connection with the department's own definition of tangible property as including stocks, bonds, etc. (art. 47, Regulations 41), in the case of United Cigar Stores Co. of America v. United States (62 Ct. Cls. 134), 5 American Federal Tax Reports, 6028, certiorari dismissed (275 U. S. 576).

In that case corporation A was organized under the laws of the State of New Jersey on May 16, 1901. It was an operating company with a number of subsidiaries and developed and acquired valuable intangibles. Subsequently, on April 23, 1909, corporation B was organized under the laws of New York, and during 1909 it issued 90,000 shares of common stock for the outstanding 9,000 shares of common stock in corporation A (ratio of 10 to 1), and bonds of \$3,600,000 par value for corporation A's preferred stock of par value \$750,000 and bonds of par value \$2,850,000. From September, 1909, to December 31, 1912, when corporation B was dissolved, it continued to own all the capital stock in corporation A. In July, 1912, corporation C was organized under New Jersey laws, and during that year issued common stock of par value of \$27,162,000, for all the outstanding common stock in corporation B, then amounting to \$9,054,000 (ratio of 3 to 1), and sold preferred stock for cash at par value of \$4,527,000, which cash was used to purchase the outstanding bonds of corporation B. The stock in corporation B had a value in 1912 of \$300 per share.

On December 31, 1912, corporation B was dissolved, its stock canceled, and its bonds retired. All its assets, consisting of cash, bills receivable and dividends accrued, and stocks and bonds of corporation A, were transferred to corporation C. On January 1, 1914, the common stock in corporation A was worth \$27,162,000. From January 1, 1913, to May 31, 1917, corporation C owned all the stock and bonds in corporation A. On March 3, 1917, corporation C had outstanding capital stock of par value of \$30,951,493, none of which was owned by any member of the consolidated group that filed a profits-tax return for 1917. The bureau made an audit in which it determined "plaintiff's consolidated invested capital" by applying the 20 per cent limitation on intangibles to the intangibles owned by corporation A in 1912 when B's stock was acquired by corporation C. In other words, the bureau included in consolidated capital intangibles of A to the extent of 20 per cent of C's stock outstanding on March 3, 1917. The additional tax resulting therefrom was in issue in the suit, in which the taxpayer contended that the consolidated invested capital should consist of the par value of C's own stock on March 3, 1917, namely, \$30,951,493, plus the consolidated surplus shown on "its consolidated balance sheet" as of January 1, 1917, which contention, of course, ignored the 20 per cent limitation on A's intangibles previously applied by the bureau.

3. The taxpayer contends that the 1918 invested capital of the Neville Iron Mining Co. (a subsidiary) should be increased for the reason that the bureau, in its audit, overstated depletion sustained on iron ore to the end of 1917.

The taxpayer's figure is based on the amount shown by bureau engineer's report, dated January 29, 1924. Subsequent to the time this report was issued it was discovered that some of the schedules contained errors. One of these was the schedule showing depletion sustained on the "Morris and Day and Winifred leases" owned by the Neville Iron Mining Co. This schedule showed the correct investment figures and also the correct ore reserves, but in showing the tonnage shipped it failed to include the tonnage applicable to the Winifred lease. The amount shown in the bureau audit as sustained depletion at December 31, 1917, reflects the correction of this error. The taxpayer's contention is, therefore, denied.

4. The bureau determined that the amount of depreciation sustained on the property of the Northern Liberties Railway Co. was less than the amount provided by the company on its books in arriving at the surplus included in invested capital in the tax return. The taxpayer agrees with this determination, but claims that the commissioner in making the adjustment on account thereof decreased the invested capital reported in the tax return, whereas he should have increased it.

The error complained of appears on page 1443 of bureau letter dated December 28, 1925. In compiling the summary showing the revised invested capital of each company in the consolidation, however, the error was corrected, so that the revised invested capital applicable to the Northern Liberties Railway Co. shown in the summary on page 2514 of this letter is greater than the amount shown on page 1443. Since the consolidated invested capital shown by the summary is the

amount which was used in the computation of the tax liability, the correction of the error complained of on page 1443 will have no effect.

5. The taxpayer contends that in computing the invested capital applicable to the Oliver Iron Mining Co. the bureau overstated the amount of depletion sustained on iron ore to the end of 1917.

The taxpayer's figure is based on bureau engineer's report, dated January 29, 1924. From a complete analysis of the accounts it is found that the amount in controversy is composed of two items.

(1) The Queen mine three-sixteenths fee and (2) the Aragon mine lease. As to the first item the taxpayer is in error for the reason that it has considered this three-sixteenths fee interest in the Queen mine as being owned by the Regent Iron Co., whereas in truth and in fact it is owned directly by the Oliver Iron Mining Co. As to the second item the taxpayer is in error for the reason that it failed to take into consideration the correction of the sustained depletion on the Aragon mine lease, which correction was made on the basis of the taxpayer's own schedule submitted to the bureau in 1925.

The taxpayer's contention is therefore denied.

ACCURED DEPRECIATION, UNIVERSAL PORTLAND CEMENT CO.

During the year 1912 the Universal Portland Cement Co. commenced the construction in Duluth, Minn., of a new plant for the manufacture of Portland cement from slag, and it was not until February, 1916, that the plant actually began operations. In determining depreciation sustained on the property owned by the Universal Portland Cement Co. the bureau merged the expenditures made for the Duluth plant with those made for other plants and applied a rate (modified by activity) which was the composite rate used for all depreciable property of this company for those years.

It is the contention of the taxpayer that no depreciation whatever should have been computed on the Duluth plant during the period of construction or prior to the time the plant was placed in actual operation and cites article 161 of regulations 45 and O. D. 845, supra, in support of its contention. The taxpayer explains that the bureau, as a result of its action, erroneously reduced invested capital by an amount representing the aggregate of the amounts of depreciation computed for the Duluth plant for the years 1912, 1913, 1914, and 1915.

The question here raised is identical in principle with the one raised in the case of the Indiana Steel Co. with respect to its Gary plant for the years 1906, 1907, and 1908, above described. In that case the taxpayer's contention is being allowed inasmuch as the result contended for is consistent with the rulings of the bureau.

It has accordingly been decided in the instant case that no depreciation be computed on the Duluth plant of the Universal Portland Cement Co. for the years 1912, 1913, 1914, and 1915, and that no reduction to invested capital should be made for such assumed depreciation.

Year 1919	
Taxes paid, original return	\$30,745,606.45
Additional payments:	
1921	\$23,123.58
February, 1928	4,275,276.83
Total additional payments	4,298,400.41
Total payments	35,044,006.86
Prior overassessment certificates (abated February, 1928)	273,004.63
Proposed refund, principal	4,391,025.70
Total overassessments	4,664,030.33
Interest (approximate)	2,300,000.00
Refund of original tax	365,629.92
Taxpayer's claim in court:	
Principal	13,401,467.40
Interest	7,500,000.00

In February, 1921, the taxpayer made a voluntary payment of \$23,123.58, due to elimination of deductions taken for so-called war activities like the Red Cross, etc.

The first travel audit report dated February 12, 1927, recommended an additional assessment of \$3,363,828.85, which was not assessed pending completion of the audit of the case. The first bureau audit was in June, 1927, and the revised audit in December, 1927. Based on the revised audit an additional tax was set up of \$4,275,276.83, which was assessed and was satisfied by a credit from 1917 overpayment, and, upon a revision of the audit in February, 1928, \$273,004.63 was allowed as an abatement.

At no time heretofore did the taxpayer of the Government consider or treat the audit as final. However, the present adjustment is agreed to be a final settlement to be carried out as noted above in the discussion of the year 1918.

Attention will now be given to the more important features involved in the present audit of 1919.

LICENSES OF PATENTS—LORAIN STEEL CO.

This issue has been discussed in detail in the report prepared on the overassessment for 1918, and repetition is not necessary here. Since the license agreement involved was terminated on May 1, 1919, it had a life of only four months in that year.

DEPRECIATION—CARNEGIE STEEL CO. (NEW JERSEY)

During the progress of the audit of the United States Steel Corporation case for the years 1917 and 1918 it became necessary to determine depreciation rates to be applied to the properties of the various companies. With respect to the properties of the manufacturing companies the bureau conceded in nearly every instance that a slightly higher rate should be used in the years 1917 and 1918 than in prior years, due to the abnormal conditions under which the plants were operated. The bureau was convinced that the additional strain placed upon these plants because of excessive production, inefficient labor, and inability to make proper repairs, brought about by the war, justified a slight acceleration in the rate of depreciation.

When the original audit for the years 1919 and 1920 was made the bureau resumed the use of the normal depreciation rates. The taxpayer strongly protested this action, claiming that practically the same conditions existed throughout 1919 and 1920 as in 1917 and 1918, due to strike troubles, even though the actual output was somewhat lower for the same cause.

In view of the matter presented the bureau at first decided to continue the accelerated depreciation rate for 1919 and 1920 for all companies which could show production reasonably close to that of 1917 and 1918. Upon the submission by the taxpayer of figures showing comparative production for the four years the bureau revised the previous audit, allowing the acceleration in rate on all manufacturing companies except Carnegie Steel Co., Lorain Steel Co., Minnesota Steel Co., and American Bridge Co. With respect to these four companies the bureau was of the opinion that the production shown for the years 1919 and 1920 did not warrant the use of the higher rate.

The taxpayer later contended that the bureau was in error in refusing to allow the accelerated rate to the Carnegie Steel Co. and explained that the strike of the steelworkers was much more detrimental to the Carnegie Steel Co. than to other companies.

It is recognized that there is considerable merit to the taxpayer's contentions that the additional depreciation sustained by reason of the strike conditions prevailing in 1919 and 1920 was as great as the additional depreciation sustained in 1917 and 1918 because of the war conditions, notwithstanding slightly lower production in 1919 and 1920.

The bureau is of the opinion that the strike conditions complained of, particularly the steelworkers' strike, did have a serious effect on the company's production for 1919 and 1920, and also added materially to the amount of depreciation the company's plants must have sustained. An examination of the production figures of the four companies on which the accelerated rate was denied, disclosed the fact that the decline in 1919 and 1920 production as compared with that of 1917 and 1918 is much greater in the case of the other three companies than in the case of Carnegie Steel Co. The taxpayer has waived its claim as to accelerated rates on the other three companies.

After taking all of the facts into consideration, the bureau has allowed the company's contention for the year 1919, but not for 1920. The distinction is based largely on the fact that the strike condition in 1920 was less serious than in 1919. The taxpayer, in order to effect a settlement of the case, has conceded the disallowance for 1920.

MARCH 1, 1913, VALUE OF LAND SOLD H. C. FRICK COKE CO.

During 1919 this subsidiary sold certain coal and surface acreage owned by it on March 1, 1913, and reported a taxable profit thereon. In arriving at the taxable gain from this transaction, the bureau is asserted by the taxpayer to have set the March 1, 1913, value at a figure represented to be less than the correct value on that date.

At the time the bureau made its field investigation the company brought to the attention of the auditor who was examining this particular company's books certain information purporting to show that the company in its tax returns had overstated the profits derived from these sales by reason of having used a March 1, 1913, value which was too low. The field auditor accepted the taxpayer's information and adjusted taxable income accordingly. Upon review of the case in Washington, the bureau reversed the field auditor's adjustments on the ground that the evidence submitted was not sufficient to establish the March 1, 1913, values claimed.

The Court of Claims, after pointing out that corporate stocks were tangible property under the bureau's regulations (art. 47, Regulations 41), held that C's stock of \$27,162,000 was issued in 1912 in payment for tangible property consisting of capital stock of B, the value of which was conceded to have been equal to the par value of C's stock then issued, and ordered judgment for corporation C in the full amount claimed. Thus the court held in effect that the consolidated invested capital should be based upon the January 1, 1914, cash value of C's assets that had been acquired for its stock in 1912, shown to be \$31,689,000, and should consist of C's capital stock of par value \$30,951,493 outstanding on March 3, 1917, plus consolidated surplus at January 1, 1917, of \$4,933,417.16. Stated abstractly, the court held that where a so-called parent corporation, prior to 1917 acquired the stock of a subsidiary for its own stock, and also prior to 1917 acquired through liquidation of the subsidiary the latter's assets, including the stock of a subsidiary corporation possessing intangibles, the 20 per cent limitation on intangibles acquired through issuance of stock is inappli-

cable because the intangibles were not in fact acquired for stock. It should also be observed that the court used a valuation at the time of acquisition of the subsidiary stock, and not the invested capital of the subsidiary which would be based on values when acquired by the subsidiary. Certiorari to the United States Supreme Court was dismissed on the initiative of the Government (275 U. S. 576, 48 Sup. Ct. 83).

In the present case the United States Steel Corporation, having issued its stock in 1901 for stock and securities in other corporations, which already were in the position of parent to underlying subsidiaries, claimed the right to include in consolidated invested capital the value in 1901 of the stocks acquired by it in 1901 and without any resulting reduction under the intangible limitation as to any intangibles then owned by the subsidiaries so acquired. This contention was conceded in theory subject to a reduction in the amount of capital for reasons indicated below:

For 1917 the increase to invested capital allowable on account of restoration of the reputed excess of intangible values over the 20 per cent maximum, pursuant to the United Cigar Stores Co. decision, was stated as \$69,000,000, but the increase was reduced to about \$39,250,000, through an agreement influenced principally by the decision by the Board of Tax Appeals, on June 19, 1928, in the case of Grand Rapids Dry Goods Co. (12 B. T. A. 696). Since the intangible limitation under the 1918 law is 25 per cent, or approximately \$43,000,000 greater than the 20 per cent limitation under the 1917 law, the amount of invested capital now allowed is less than the maximum amount allowable under the 1918 act so far as the limitation provisions are concerned.

For purposes of illustration of the principle involved in the board case just cited, a résumé of the facts developed in the decision in that case is here given.

The subsidiary corporation was organized in 1912 with a paid-up capital stock of \$60,000, but prior to December 31, 1919, it had paid no dividends, and from January 1, 1919, to August 1, 1919, it had sustained an operating deficit of an undisclosed amount. On August 1, 1919, the parent corporation purchased the stock in the subsidiary from its stockholders for \$15,000 cash. The bureau excluded the subsidiary's separate capital of \$60,000, and substituted \$15,000 therefor, in the consolidated invested capital computation. The Board of Tax Appeals, after citing with approval its prior decisions to the effect that, in determining consolidated invested capital, the corporate entities are to be disregarded, and that therefore the situation is like that of a single corporation purchasing its own stock; held that the cash capital paid in to the subsidiary, \$60,000, should be treated as having been returned to the stockholders, to the extent of the \$15,000 paid by the parent to the subsidiary's stockholders, thus leaving in consolidated capital \$45,000 of the original capital paid in to the subsidiary.

Two members of the board (Messrs. Sternhagen and Marquette) dissented on the ground of insufficient evidence of the correct capital, but were agreed that the bureau had erroneously treated the transaction as if the parent had bought the subsidiary's assets, instead of its stock, for the \$15,000. Mr. TRAMMELL seems to have dissented upon the ground that the board's theory was wrong, pointing out the logical consequences, that the invested capital, with respect to the subsidiary acquired, would be in inverse proportion to the true value of the subsidiary's stock. He further expressed the opinion that no liquidation of stock could occur from the purchase by one corporation of the stock of another, even if the two are admittedly affiliated and the purchase be of a minority interest, to this extent recognizing the separate entities. He also stated that if the parent purchased the subsidiary stock, other than out of current earnings, there would be a duplication that should not increase invested capital because the parent's funds were already included in its invested capital. Mr. MURDOCK's dissent also was based on the insufficiency of evidence in the record, but he apparently was of opinion that no additional capital, over that of the parent alone, came in to the consolidation by the purchase of the subsidiary stock by the parent.

The possible effect of application of the rule in the Grand Rapids Dry Goods Co. case upon the determination of consolidated invested capital in the United States Steel Corporation case was considered at some length in the report on the present case covering the year 1917, wherein there were discussed various decisions by the board, such as Regal Shoe Co. (1 B. T. A. 896), acquiesced in; National Bakers' Egg Co. (3 B. T. A. 1205); and Gould Coupler Co., supra, in which cases affiliation did not persist during the taxable years there involved; Middlesex Ice Co. et al. (9 B. T. A. 156), not acquiesced in, where the board indicated that consolidated invested capital should be arrived at by adding the separate capitals of the members of the group, and then eliminating duplicated items or amounts, either of investment or of earned surplus, and refused to sanction the bureau's action in eliminating the earned surplus of a subsidiary at the time its stock was acquired by the parent company, after a finding of fact that such surplus was not reflected in the accounts of the parent; L. S. Donaldson Co. (Inc.) et al. (12 B. T. A. 271), acquiesced in, where the board held that consolidated invested capital should include appreciation of an asset, over cost to the parent, realized when assigned prior to 1917 by the parent to the subsidiary for the latter's stock, the board rec-

ognizing that duplication of the asset value and the cost of the subsidiary stock to the parent should be eliminated, but pointing out that its prior decisions, such as *Farmers Deposit National Bank*, supra; *H. S. Crocker Co.*, supra; *American La Dentelle (Inc.)* (1 B. T. A. 575), acquiesced in; *Gould Coupler Co.*, supra; and *Risdon Tool & Machine Co.* (5 B. T. A. 530), did not hold that the affiliated group should be treated as a single economic unit, or that such a group should be taken as having the attributes of a single taxpayer prior to the time when consolidated returns were required; *Hollingsworth, Turner & Co.* (1 B. T. A. 958), acquiesced in, wherein the board expressly approved of article 868 of Regulations 45, but did not set forth sufficient facts to permit of a close scrutiny of the application of the regulation; *Burke Electric Co.*, supra, wherein the facts are not well developed, but the board denied a claim for paid-in surplus where stockholders of a subsidiary sold their stock to the parent for cash at less than its actual value, apparently on the sole ground that the purchase price to the parent did not affect consolidated invested capital; and *W. S. Bogle & Co. et al.* (5 B. T. A. 541), acquiesced in, where the board (by Mr. Littleton) held that under section 240 of the 1918 law there is no distinction between the two classes of affiliation, usually termed "Class A" and "Class B," in computing the tax or determining the consolidated invested capital.

It was recognized in the report for the year 1917 that the matter of the proper method of determining consolidated invested capital was still unsettled in view of the position taken by the board contrary to the *United Cigar Stores Co.* decision. Because of the unsettled condition of the issue, the 1917 profits-tax liability was determined through settlement, to avoid the uncertainties of prolonged litigation. The basis of settlement was explained in detail to the Joint Committee on Internal Revenue Taxation, orally and in the report to that committee pursuant to section 710 of the revenue act of 1928.

It was recognized, also, in the report on the year 1917 that a technical application of the *Grand Rapids Dry Goods Co.* decision by the board would require an analysis of transactions occurring long prior to the taxable year, some of the companies being a century old. This task was obviously impossible of performance in the present case.

Subsequent to the time when the year 1917 was under consideration very little in the way of preceptive and enlightening authority has been established. The board has handed down a few decisions following the theory used in the *Grand Rapids Dry Goods Co.* decision, supra (e. g., *Auto Sales Corporation*, 14 B. T. A. 61; *Pittsburgh Supply Co.*, 14 B. T. A. 620; *American Bond & Mortgage Co.*, 15 B. T. A. 264; and *Trustees for Ohio & Big Sandy Coal Co.*, 15 B. T. A. 273), but none of these decisions have been reviewed by the circuit court of appeals. Although the case of the *Auto Sales Corporation*, supra, is now pending before the circuit court of appeals, it seems that the court's decision will in all probability be confined primarily to issues of fact, as was the board's decision, and that the legal principle involved will not be decided by the higher court. It also seems doubtful if a precedent will be established in the case of *Trustees for Ohio & Big Sandy Coal Co. et al.*, supra, now pending before the circuit court of appeals, due to the peculiar facts in that case.

As was pointed out in the report on the 1917 part of the case, at least four different theories as to consolidated invested capital determination have developed as follows:

A. Treasury departmental regulations, articles 867 and 868, regulations 45 and 62.

B. As held by the Court of Claims in the case of *United Cigar Stores Co. of America v. United States* (62 Ct. Cls. 134, 5 American Federal Tax Reports 6028) certiorari dismissed (275 U. S. 576, 48 Sup. Ct. 83).

C. As held by the Board of Tax Appeals, in the case of *Grand Rapids Dry Goods Co.* (12 B. T. A. 696).

D. The so-called legal theory, as advanced by attorneys for the taxpayer herein.

These theories will be briefly outlined.

A. The principle of articles 867 and 868, regulations 45 and 62, supra, first appeared in the edition of Regulations 45 approved April 16, 1919, as T. D. 2831. This principle was to treat the acquisition of the subsidiary's stock as if the latter's assets were in fact acquired, thereby also giving effect to changes in value of the subsidiary's assets since their acquisition by it. The statutory 25 per cent limitation was applied in cases where subsidiary stock was acquired for the parent's stock and intangibles were owned by the subsidiary.

B. The Court of Claims held, in the *United Cigar Stores Co. of America* case, that consolidated capital should include the value of the subsidiary stock at the time acquired by the parent company—in which respect it is in harmony with the bureau regulations above cited—but it held inapplicable the percentage limitation on intangibles of the subsidiary presumptively acquired with stock of the parent. The court looked at the reality of the transaction, i. e., the acquisition of subsidiary stock for stock in the parent, and disregarded the presumption in the bureau regulations that the parent in effect was acquiring the subsidiary's assets.

C. The board's decision in the case of *Grand Rapids Dry Goods Co.* differs from the two foregoing positions, in that it disregarded the value of the subsidiary's assets at the time when the parent acquired

the subsidiary stock, but looked back to the invested capital or acquisition value of the assets of the subsidiary taken by itself. Such a method eliminates any depreciation or appreciation in market value of property acquired or developed by the subsidiary prior to consolidation with the parent. Later board decisions indicate its view of consolidated capital to be the sum of the invested capitals of each member of the group, separately determined, minus so-called duplication representing the acquisition cost to the parent of the subsidiary's stock. However, under the board's theory the reorganizations prior to 1917 would aid the taxpayer because appreciation occurred that would be recognized in 1918 capital both by the board decision (e. g., *Regal Shoe Co.*, 1 B. T. A. 896) (acquiesced in) and bureau ruling (e. g., *L. O. 1108, III-1 C. B. 412*).

D. The taxpayer's representatives herein have contended for a so-called legal theory whereby consolidated invested capital would consist of the sum of the separately determined invested capitals of each member of the group, without any reduction for duplication of investment, as between subsidiary and parent, but subject to inadmissible adjustment under section 326 (c) of the 1918 act. In the petition to the Court of Claims an invested capital is claimed of \$1,915,715.682.25, whereas the amount now allowed is about \$1,446,480,787.78.

The present case is adjusted under the theory of the *United Cigar Stores Co. of America* decision, supra, after making a reasonable allowance for a reduction in capital through the theory of the *Grand Rapids Dry Goods Co.* decision, supra. The amount of capital so determined on this basis is slightly less than that allowable under the bureau regulations. In other words, the amount of capital now accepted is supported both by the theory of the bureau regulations and that of the *United Cigar Stores Co. of America* decision, supra, and, under one view, by the *Grand Rapids Dry Goods Co.* decision, supra. If the case should go to trial and the Court of Claims would strictly apply its own theory, as expressed in the *United Cigar Stores Co. of America* decision, supra—as it would be expected to do—there seems to be little question but that in adjusting values under that theory the amount of capital as now determined would be very substantially increased.

If the taxpayer's legal theory should be maintained, in litigation, by the Supreme Court, then the capital so allowed would exceed the amount allowable under any of the other three theories, by several hundred million dollars.

Discussions relative to the determination of consolidated invested capital in adjusting the 1917 part of the case may be found in House Document 143, Seventy-first Congress, first session, entitled "Refunds and Credits." This document contains the report of the Joint Committee on Internal Revenue Taxation pursuant to section 710 of the revenue act of 1928 and the report of the staff of the joint committee to the committee. On page 60 of this report appears a letter from Hon. W. C. Hawley, chairman, to the commissioner, which reads as follows:

DECEMBER 19, 1928.

Hon. DAVID H. BLAIR,

*Commissioner of Internal Revenue,
Treasury Department, Washington, D. C.*

MY DEAR MR. COMMISSIONER: The Joint Committee on Internal Revenue Taxation at two sessions held on December 17, 1928, considered some of the problems involved in arriving at the tax liability of the *United States Steel Corporation* for the year 1917, with special reference to the computation of the consolidated invested capital.

After considering the statements of your representatives, the preponderant opinion of the members of the committee was that the committee should not interfere with your bureau in the determination made and the refund proposed.

The staff of the committee is still engaged in making certain mathematical checks of this case. If any questions arise in connection with such checks, they will be taken up in the usual way before the expiration of the 30-day period.

Very truly yours,

W. C. HAWLEY, *Chairman.*

On December 19, 1928, Mr. Parker addressed a letter to the bureau in which he made inquiry (1) as to the procedure the bureau expected to follow in arriving at consolidated invested capital of the *United States Steel Corporation* and subsidiary companies for the years 1918 to 1920, inclusive, and (2) as to the possibility and feasibility of taking a test case through the courts which would develop the fundamental theory of consolidated invested capital. The answer made was to the effect that in view of the comparatively few profits-tax cases remaining in the bureau which would be affected; the impracticability of withholding action on such cases until the outcome of a test case; also in view of the difficulty of prosecuting a case which would bring out all of the points involved in all cases, the bureau believed that it had adopted the best policy in deciding to settle this type of case and that it planned to pursue this policy in adjusting the *United States Steel Corporation* case for the years 1918 to 1920, inclusive.

The amount of capital finally adopted by the bureau represents an administrative settlement of an exceptionally difficult situation, upon

a basis that is believed to be entirely satisfactory to the Government. The amount is believed to be less than may be expected to be maintained in possible litigation, if the suit be pressed through the courts.

INVESTED CAPITAL, PRIOR DEPRECIATION, INDIANA STEEL CO.

The Indiana Steel Co. was incorporated February 1, 1906, and shortly thereafter commenced construction of its plant at Gary, Ind. Construction continued during 1906, 1907, and 1908, and it was not until November, 1908, that the company actually began any operations whatever, and then only to a very minor extent.

It is the contention of the taxpayer that no depreciation whatever should have been computed on the plant during the period of construction prior to the time the plant was placed in actual operation, and it cites article 161 of regulations 45 and O. D. 845 (4 C. B. 178), in support of its contention. The taxpayer contends that as a result of the bureau's action its invested capital was erroneously reduced by the aggregate of the amounts of depreciation computed for the years 1906, 1907, and 1908.

Article 161 of regulations 45 provides that in computing net income there shall be allowed as a deduction a reasonable allowance for exhaustion, wear and tear, and obsolescence of property used in the trade or business. This regulation provides further that the proper allowance for such depreciation of property used in the trade or business is that amount which should be set aside for the taxable year in accordance with a consistent plan by which the aggregate of such amounts for the useful life of the property in the business will suffice, with the salvage value, at the end of such useful life to provide in place of the property its cost, or its value as of March 1, 1913.

O. D. 845 (supra) defines the term "useful life" to mean the period of time over which an asset may be used for the purpose for which it was acquired. This ruling further states that in the case of a new building the period starts at the time the building is completed and capable of being used, and that a building under construction is not subject to a depreciation allowance for income-tax purposes. (See also footnotes to Schedules A, B, and C, in the board's decision in the case of Planters Nut & Chocolate Co. (7 B. T. A. 173) (acquiesced in).)

In view of the fact that the Gary plant did not start operations until November, 1908, and then only to a minor extent, the bureau is of the opinion that no depreciation should have been computed for the years 1906, 1907, and the first 10 months of 1908. Beginning with November 1, 1908, depreciation should be computed at a reduced rate during the period of minimum operations and at the regular rate thereafter.

SO-CALLED MECHANICAL ERRORS IN AUDIT

1. The United States Steel Corporation for many years has conducted a stock-sales plan whereby it sells shares of its own stock upon the installment basis to its employees. In addition to the regular dividends on such stock, a special additional "dividend" is credited annually to each subscription account until the subscription is fully paid for. The stock so subscribed for has been excluded from invested capital until fully paid for, the regular and special "dividends" being treated as additional compensation to the employees and deductible from gross income. In the case of subscriptions entered into in 1916 and later years, these credits have been treated as deductible only in the year of final payment on the stock, because the credits were subject to revocation in the event of cancellation of the subscription, but in the case of subscriptions entered into prior to 1916 the credits to the subscription accounts were irrevocable.

For 1917 the corporation deducted an amount as special compensation on stock subscriptions, but the final credits on various subscriptions in that year amounted to a smaller sum. The difference was disallowed as a deduction for 1917, but was not restored to 1918 invested capital in the prior bureau audits, because the credit for 1917 special compensation was not actually entered on the books until January 10, 1918, while the capital was based upon an analysis of the stock-subscription accounts as shown by the books at December 31, 1917. This being a purely audit error, the correction is conceded.

2. The taxpayer contends that the 1918 invested capital of National Tube Co. (a subsidiary) should be increased by an amount representing the difference between the amount deducted by the said company from its gross income in 1917 on account of its tube-mill furnace rebuilding fund and the amount allowed by the bureau on account thereof.

The tube-mill furnace rebuilding fund is a surplus reserve provided from income to create a fund from which expenditures are made for the purpose of keeping the tube-mill furnaces in proper operating condition. For the years 1909, 1910, 1911, 1912, 1913, and 1918 the company deducted in its income-tax returns the provisions which were charged to income and credited to the reserve on the books, while for the years 1914, 1915, 1916, and 1917 the company deducted in its income-tax returns the expenditures which were charged to the reserve on the books. Treating the account as a surplus reserve, the bureau allowed the expenditures charged thereto as deductions from income in all years. There was no disallowance in 1917 as claimed by the taxpayer. The credit balance shown by the reserve at the beginning of 1917 was included by the taxpayer in 1917 invested capital reported

in the tax return, and correctly so, while the credit balance in this account at the beginning of 1918 was erroneously omitted from the invested capital reported for 1918. The bureau in auditing the 1918 tax return failed to correct this error. It is clear, therefore, that invested capital for 1918 should be increased by the amount claimed, not for the reason claimed by the taxpayer but for the reason that it represents the amount of the credit balance in this account at the beginning of 1918.

The only evidence which the taxpayer submitted consisted of several affidavits, each of which is executed by a person who declares that he has been a resident of the county and State wherein the properties are located, for a period anywhere from 50 to 70 years, and that in the opinion of the deponent therein mentioned certain lands are worth certain values as of March 1, 1913, all of which supports the claim made by the taxpayer. The affidavits were dated approximately the 1st of October, 1927.

The taxpayer sought to have the matter reconsidered on the ground that the affidavits are the best evidence available and for that reason should be accepted as establishing the value at issue.

It is believed that an affidavit executed in 1927 expressing an opinion as to the value of an asset as of a date 14 years prior thereto should not be accepted as conclusive without further supporting evidence. The taxpayer's contention has accordingly been denied.

TRACK DONATIONS—RAILROAD SUBSIDIARIES

In the brief filed a request is made for the elimination from gross income of two items representing transfers of spur tracks, grading costs, and the like, to the railroad corporations from industrial concerns along their lines of road, alleged to be gifts and not taxable income. Reliance is had on the board's decision in the case of Great Northern Railway Co. (8 B. T. A. 225), acquiesced in, on this issue.

All the grading referred to above was on the railroad company's right of way, in connection with spur tracks desired by the contributors, as were the tile and fire hydrant contributed by those who desired the installation of such facilities for their own benefit. The record does not show whether the contributions covering grading were in labor, or in cash to cover cost of grading. The tracks graded were owned by the railroad company and were carried in its property account at cost, included in which was the cash or estimated value of the labor contributed, in compliance with Interstate Commerce Commission regulations.

The amount of the said contributions has been included by the bureau in gross income, which action the company protests on the theory that it does not constitute an item of taxable income within the meaning of the sixteenth amendment and the income tax laws.

A similar issue was considered by the bureau in connection with the company's income and profits tax liability for 1918, and in view of the decision of the United States Supreme Court in *re Edwards v. Cuba Railroad Co.* (268 U. S. 628) and the decisions of the United States Board of Tax Appeals, in *re Great Northern Railway Co.*, supra, and other similar cases, it was held, as it is here, that the contributions in question should be excluded from gross income.

MARCH 1, 1913, VALUE OF JONES ISLAND REAL ESTATE—ILLINOIS STEEL CO.

The Illinois Steel Co., in a schedule showing a reconciliation between book income and taxable income, filed with the consolidated income and profits tax return for the year 1919, reported a certain sum as nontaxable income. The item in question represents the excess of the sales price over cost prior to March 1, 1913, of certain parcels of land on Jones Island near Milwaukee, Wis., which land was condemned and acquired by the city of Milwaukee. The company contended in its tax return that the March 1, 1913, value of the property in question was equal to the portion of the sales price received in 1919; hence no taxable gain was derived from the transaction.

The bureau in its travel audit report dated February 12, 1927, denied the taxpayer's contention that the March 1, 1913, value of Jones Island real estate was equal to the sales price received in 1919. The taxpayer having failed to submit sufficient data to enable the travel auditor to establish a March 1, 1913, value the excess of the sales price over cost was added to taxable income for the year 1919.

In the brief since filed the taxpayer asserted error on the part of the bureau in its audit of December 20, 1927, in using a March 1, 1913, value less than sales price. The March 1, 1913, value used by the bureau, in its 60-day letter of December 20, 1927, was the assessed value on that date for purpose of local taxation. The land was adaptable for use as a factory site, coal yard, dock, or wharf, but was taken over by the city of Milwaukee for public purposes.

An issue having thus been raised as to the correct March 1, 1913, value of the land on Jones Island, additional evidence as to this transaction was requested by the bureau. The taxpayer made a further investigation into the matter and considered the applicability of the decision by the Circuit Court of Appeals for the Third Circuit, in the case of *Tabor Manufacturing Co. v. United States* (34 Fed. (2d) 140), reversing the Board of Tax Appeals decision reported in 10 B. T. A. 1197. (It may be noted that the method of treating the appreciation as gradually accrued, which was sanctioned by early departmental rulings cited in *Hays v. Gauley Mountain Coal Co.* (247 U. S. 189, T. D.

2724) was adopted by the circuit court of appeals because of the "entire absence of any competent data that made possible any other fixation," such as comparable sales or evidence of fluctuations in value.)

In the course of the taxpayer's inquiry as to the March 1, 1913, value of the land sold, it developed that while the greater part of the purchase price for such land was not actually paid over to the vendor corporation until 1919, this was due to the pendency of sundry conflicting claims for the proceeds of the sale. The evidence indicates that the damages awarded the taxpayer company were confirmed by the city council; that the moneys in payment thereof were in the hands of the city treasurer and ready to be paid over to the owner; and that the statutory 10-day notice to the board of public works was given, all in 1917, so that it is probable that the title vested by operation of law under the local statute during the year 1917. It is also stated that the taxpayer corporation, in its settlement with the city of Milwaukee, was relieved of payment of property taxes on the land after 1917, the adjustment being based upon the theory that the sale was effected in 1917. (See in this connection sec. 16, Ch. VI of the amended charter of Milwaukee, in ch. 524 of Wisconsin Laws of 1887 (p. 1397), and sec. 13, ch. 297, Wisconsin Laws of 1907. Cf. *North Texas Lumber Co. v. Commissioner*, 30 Fed. (2d) 680.)

In settlement of the issue the taxpayer has consented to have the sale treated as a 1919 transaction, but productive of no taxable income in that year.

DONATIONS

In the brief filed on August 24, 1929, request was made for the right to deduct so-called donations made by the National Tube Co. to the Y. M. C. A., and of \$7,500 made by the National Tube Co. to the same association. These donations are like the Y. M. C. A. "donation" described in the report on 1918, and for the reasons therein given, the amounts paid in 1919 have been allowed.

PROFITS FROM STATE LEASES

Four subsidiaries received a large amount of income in 1919 from the operation of leases of mineral lands owned by the State of Minnesota or political subdivisions thereof. The taxpayer has agreed, in order to effect a settlement of the entire case for the year 1919, not to insist upon the claim to exemption of this income, and the exemption has accordingly been denied. This issue is discussed more fully in the report on 1918.

BOND PREMIUM IN INCOME

This issue is the same as was treated in the report on 1918, the same corporations being involved. It is deemed unnecessary to repeat here the basis of the rulings there discussed, which are equally applicable to the later year. For purposes of settlement the taxpayer has yielded on this issue, and to so-called bond premium, representing proportionate parts of the total premium received on issuance of the bonds prior to 1919 has been included in the 1919 taxable income.

UNRELEASED PREMIUM, DULUTH, MISSABE & NORTHERN RAILWAY CO.

As the bonds bought had been issued at a premium in years 1909 to 1914, the bureau added to 1919 income the so-called unreleased or unamortized premium. This issue is the same as was discussed in the report on 1918 and has been disposed of similarly, i. e., contrary to the taxpayer's contention.

TAXES IN INVENTORY—OLIVER IRON MINING CO.

In the taxpayer's brief objection was raised to the bureau's action in adding to the closing inventories of the Oliver Iron Mining Co. an amount described as taxes on real estate levied by various States or their political subdivisions. A similar contention was made for the year 1918, and as the material facts are the same in both years and are governed by the same taxing statute and legal principles, the taxpayer has agreed to a settlement upon the same basis, namely, that such taxes are to be considered a part of the value of the closing 1919 inventories. Inclusion of the amounts of tax in the closing 1918 inventories is, of course, to be retained in the opening 1919 inventories.

INVENTORY—ILLINOIS STEEL CO.

This issue is also like that involved in 1918. It is the taxpayer's position that the same situation prevailed in 1919 as in 1918, and the bureau holds that the issue should be disposed of in the same manner; namely, that the taxpayer's inventories at the close of the year should be accepted and not discarded for inventories set up by the bureau upon the basis of its presumption that the ores on hand at December 31, 1919, were those last received.

CHARTER HIRE, REQUISITIONED SHIPS—UNITED STATES STEEL PRODUCTS CO.

During the year 1919 this subsidiary admittedly realized taxable income from charter hire on certain steamships requisitioned by the Emergency Fleet Corporation for operation in behalf of the United States. The amount of such income was reported in 1919 as subject to tax at 1918 rates under section 301 (c) of the revenue act of 1918. In the letter brief it was contended that income from requisitioned ships should not be treated as income from Government contracts, upon authority of *G. C. M. 843, V-2 C. B. 131*, the facts in the two cases being alleged to be alike. In the present case a total of nine vessels were

requisitioned, all ocean-going freighters and completed prior to requisition. They were operated partly on the bare-boat basis and partly on a time basis. One of these boats was wrecked on April 26, 1918, and another sunk on September 16, 1918, while in the Government service. The period of Government operation extended from October 11, 1917 (for the *Bantu*), to June 26, 1919 (for the *Santa Rosalia*).

In the bureau ruling cited, section 240 (a) of the revenue act of 1918 was involved. Two operating steamships were requisitioned in October, 1917, by the United States Shipping Board, pursuant to its authority delegated it by Executive order of July 11, 1917, under the urgent deficiency act of June 15, 1917. In January, 1918, the steamship owners signed "requisition charters" concerning the operation of the steamships, whereby the owners agreed to accept certain compensation in full satisfaction of any and all claims they might have against the United States arising out of the requisition, and to accept the compensation therein provided as the just compensation required by law. The bureau held that the shipowners, in signing the requisition charters, did not contract with the Government, and therefore the income so received was not income derived from a Government contract, which term was defined in section 1 of the 1918 act. It was held further that the compensation received was not contractual in nature but the liquidation of a claim for its use of the vessels, established by the Constitution and section (e) of the act of June 15, 1917, citing *Benedict v. United States* (271 Fed. 719) and *Seaboard Air Line Railway Co. v. United States* (261 U. S. 299). Under said section (e) of the act of June 15, 1917, it was provided that the Government should make just compensation for ships requisitioned by it, but if the amount allowed by it was unsatisfactory to the shipowner, the latter could receive 75 per cent of the amount allowed and sue for the balance. The ruling (*G. C. M. 843*) was based further upon the analogy asserted to that part of article 1510 of regulations 45 to the effect that agreements for just compensation of owners of transportation systems, pursuant to the act of March 21, 1918, are not to be regarded as Government contracts. Since the situation in the present case appears to fall within the ruling made in *G. C. M. 843*, the taxpayer's contention upon this issue has been allowed.

DEPRECIATION BASE REDUCED BY TENTATIVE AMORTIZATION AND INVESTED CAPITAL REDUCED BY TENTATIVE AMORTIZATION

At the time the bureau made its former audit covering the years 1919 and 1920 the final determination of the allowance for amortization of war facilities had not been made. In order to protect the interests of the Government against the running of the statute of limitations (as extended by the waivers then on hand), the bureau increased income reported for each of the years 1919 and 1920 and reduced the invested capital reported for each of these years. These adjustments were made on the theory that the maximum possible deduction for amortization which might eventually be allowed would not exceed a certain amount, and that the total allowance might be deductible from 1918 income.

The taxpayer now requests that these adjustments be reversed and in their place be substituted similar adjustments based on the correct amortization allowance as finally determined.

It is the regular practice of the bureau to make such a correction sua sponte when amortization is finally determined, so that the taxpayer's request is granted.

PATENT DEPRECIATION—AMERICAN STEEL & WIRE CO.

During the year 1918 the American Steel & Wire Co. purchased a patent which expired by limitation in April, 1928. In its 1918 return the company deducted three-fourths of one-tenth of the purchase price on account of the exhaustion of this patent. In 1919 the company, instead of deducting a full year's exhaustion, erroneously deducted the same amount as it had for 1918. The company now requests that an additional deduction be allowed.

The error to which the taxpayer called attention has already been corrected by the bureau. A full year's deduction was allowed on account of the exhaustion of this patent in bureau audit letter dated June 27, 1927 (p. 174); therefore, no further adjustment is necessary.

UNIVERSAL PORTLAND CEMENT CO.

The bureau's action in disallowing a deduction for cost of furniture and fixtures acquired in this year, taken by the taxpayer in lieu of depreciation, is reversed for reasons set out in the 1918 report. Similarly the accrued depreciation charged by the bureau on assets prior to completion has been readjusted as for the year 1918.

OBSOLETENESS—SHARON COKE CO.

During the year 1919 this subsidiary claimed to have abandoned and scrapped its beehive coke plant at Ronco, near Pittsburgh. Operation of these facilities ceased at the close of 1918, but the book entry of the loss claimed was not made until December, 1925, and no deduction was claimed in the 1919 return. Upon field investigation of the claim it was found that although operations ceased in 1918 no actual steps toward abandonment or scrapping of the ovens were taken until after 1920, and there was no evidence of an intention in 1919 to abandon these facilities. While dismantling began in 1922 most of the work was done in 1923. The loss was claimed as a deduction in the tax return for 1925, the year of write off on the books.

Based upon the evidence obtained by field investigation, the deduction claimed for 1919 has been disallowed, and the taxpayer has acquiesced to effect a settlement.

AMORTIZATION

The amount of amortization apportioned to the year 1919 has been applied against the net income from Government contracts, subject to tax at 1918 rates, pursuant to section 301 (c) of the revenue act of 1918. This subject is more fully discussed in the report for 1918.

INVESTED CAPITAL

In general the taxpayer's claims for invested capital adjustment are the same as for 1918, but it has agreed to a settlement upon the same basis as in the preceding two years, subject to incidental changes resulting from prior year adjustments in the audits and minor corrections.

ACCURED DEPRECIATION—INDIANA STEEL CO.

The issue raised by the taxpayer as to the depreciation claimed by the bureau to have accrued on certain assets of the Indiana Steel Co. prior to completion of their construction, which was used by the bureau to reduce invested capital, has been discussed in the present report on the year 1918. The same disposition of the matter is made for this year as for 1918.

REDUCTION FOR STOCK PURCHASED

The taxpayer (parent) objected to reduction of its capital on account of stock purchased during the taxable year. While contending that current earnings were sufficient to cover such purchases, the taxpayer recognized the contrary view in article 862, regulations 45, as amended by T. D. 4102, VI-2 C. B. 291, which holds that only the excess of the purchase price of stock so bought over the issuing price of the stock may be absorbed by current earnings, and then only in case of purchases after the first 60 days of the taxable year. In other words, capital is reduced by the amount of the purchase price representing the capital previously paid into the corporation for such stock.

In the travel audit report dated February 12, 1927, the bureau made adjustments reducing the 1919 invested capital representing treasury stock purchased within the first 60 days of the year, averaged according to the dates of purchase. In a subsequent 30-day letter the entire amount was restored to capital on the ground that article 862, regulations 45, required a reduction only to the extent that such stock was not purchased out of the current earnings for the year. After this article was amended on November 23, 1927, by T. D. 4102, supra, a subsequent audit letter reduced the invested capital for stock purchased after the first 60 days of the year, as well as during that period.

As the amount of the adjustment, on purchases after March 1, 1919, depends upon the value allowed as capital originally paid in to the company for such stock, if any additional value were allowed as capital paid in for stock at April 1, 1901, over and above the bureau's previous allowance, it would correspondingly increase the amount by which capital would have to be reduced on account of the purchase by the company in 1919.

The taxpayer agreed, in settlement, to abide by the bureau's action, in adhering to the provisions of T. D. 4102 upon this point.

Year 1920	
Taxes paid, original return	\$27,629,722.53
Additional payments:	
June 20, 1924	\$1,396,161.23
February, 1928	4,170,384.00
Total additional payments	5,566,545.23
Total payments	33,196,267.76
Prior overassessment certificates (abated February, 1928)	269,087.37
Proposed refund, principal	2,336,240.96
Total overassessments	2,605,328.33
Interest (approximate)	500,000.00
Net additional tax	2,961,216.90
Taxpayer's claim in court:	
Principal	12,827,344.94
Interest	3,300,000.00

An amended return was filed June 20, 1924, to eliminate the deduction of a liability found to have been overstated in the original return. The taxpayer made voluntary payment of additional tax of \$1,396,161.23.

The first field agent's report was dated February 12, 1927. The bureau audit of June, 1927, as revised in December, 1927, set up a deficiency of \$4,170,384, which was assessed. Numerous changes in net income and invested capital were made in the course of this audit. Part of the additional tax was paid in cash, part was satisfied by credits from 1917 and 1918, and part was abated early in 1928.

The abatement of \$269,087.37 in February, 1928, was due to adjustments like those made in the case of the year 1919, at the same time.

As stated above in connection with 1918 and 1919, the audit for this year also was not deemed closed by either the taxpayer or the Government. As in the case of the two preceding years, the present audit is agreed upon as a final settlement, to be given effect by dismissal of the suit on file in the Court of Claims and the execution of a closing agreement under section 606 of the revenue act of 1928.

With the foregoing summary of the adjustments heretofore made, attention will be given to the principal features connected with the pending settlement for 1920.

DEPRECIATION—CARNEGIE STEEL CO.

It is contended that although the production attained in 1920 fell below that of 1917 and 1918, this decrease was due to special conditions in the industry, such as the effects of the so-called outlaw strike of railroad switchmen and other railroad employees, in April, 1920, and the employment of incompetent labor. After consideration of this issue, it was proposed to disallow the additional deduction for depreciation in 1920, and although the taxpayer called attention to the allowance of additional depreciation to other operating subsidiaries, in order to settle the case, it has yielded the issue as to 1920. (See also the accompanying report on 1919.)

TRACK DONATIONS—ELGIN, JOLIET & EASTERN RAILWAY CO.

During 1920 this subsidiary received from certain industrial concerns along its lines, conveyance of side or spur tracks connecting their plants with the railroad main lines. This amount was added to taxable income by the bureau in its preliminary audits, but on authority of the decision in the case of Great Northern Railway Co. (8 B. T. A. 225) (acquiesced in, on this issue), and other cases in accord, the amount in controversy has been excluded from 1920 taxable income.

DONATIONS—NATIONAL TUBE CO. AND THE NATIONAL TUBE CO.

This issue as to the deductibility of these items, is the same in character as in the case of the so-called donations by these two subsidiaries in the preceding two years, and on authority of the rulings cited in the report on 1918, the deductions claimed have been allowed.

PROFITS FROM STATE LEASES

Five corporation subsidiaries received in 1920 large amounts of income from mineral lands owned by the State of Minnesota or its political subdivisions, as in the two preceding years. In order to effect a settlement of the taxes for 1920, as in the case of the prior years, the taxpayer has receded from its contentions on this point, so that such income will remain subject to tax. For a discussion of some of the relevant rulings on the topic, reference is made to the report on 1918.

BOND PREMIUM IN INCOME

Six railroad subsidiaries and one industrial subsidiary issued bonds at a premium prior to 1920, and the bureau has included in income of the latter year an aliquot part of those premiums. The taxpayer has raised objection to this action on authority of the board and court decisions in the case of Old Colony Railroad Co. (6 B. T. A. 1025 (not acquiesced in), and 26 Fed. (2d) 408). After consideration of the issue, in connection with such rulings as are mentioned in the report on 1918, the bureau has adhered to its formal regulations on the matter, and the taxpayer has accepted that result, by way of settlement of the case.

UNRELEASED PREMIUM—DULUTH, MISSABE & NORTHERN RAILWAY CO.

The petition to the Court of Claims asserts error on the part of the bureau in adding to 1920 net income an amount described as unreleased premium on bonds. During 1920 this subsidiary purchased its own bonds, that had been issued in prior years at a premium, for less than the prior issuance price and denies that the difference is income. This issue has been discussed more fully in the report on 1918. The taxpayers contention has been disallowed as in the prior years.

TAXES IN INVENTORY—OLIVER IRON MINING CO.

This issue is like that affecting the two prior years. The legal aspects of the point are the same as in the preceding years, described in the accompanying report on the year 1918. In order to effect a settlement of the entire case, the taxpayer has not insisted upon securing a favorable decision on the issue, and the opening and closing inventories now include a part of the taxes paid in 1919 and 1920, respectively.

UNIVERSAL PORTLAND CEMENT CO.

The bureau's action in disallowing a deduction for cost of furniture and fixtures acquired in this year taken by the taxpayer in lieu of depreciation, is reversed for reasons set out in the 1918 report. Similarly, the accrued depreciation charged by the bureau on assets prior to completion has been readjusted, as was done for the year 1918. This procedure in 1920 is consequent upon the adjustments made for 1918.

RAILROAD SETTLEMENTS WITH DIRECTOR GENERAL

With reference to the settlements made with the Director General of Railroads, four of the affiliated corporations received lump-sum awards from that officer in 1921. The taxpayer included an amount representing the excess of the director general's allowances over the book accruals of the carriers, in its 1921 gross income, but the bureau, in a prior audit restored substantially all of that amount to 1920. The taxpayer has no taxable income in 1921 notwithstanding the inclusion of this income in that year. The items allowed by the director general were based on undermaintenance of roads and equipment during Federal control, compensation for materials and supplies taken over but

not restored by the director general, and rental interest on additions and betterments. Careful consideration was given to the taxpayer's contentions and to relevant board and court decisions, and in settlement of the case, of the total amount included by the taxpayer in its 1921 return more than half has been restored to 1920 income and subjected to tax.

MARCH 1, 1913, VALUE OF LAND SOLD H. C. FRICK COKE CO.

During the year 1920 the H. C. Frick Coke Co. sold certain coal and surface lands and reported a taxable profit thereon. The situation in 1920 is like that for 1919, and reference is made to the report on the latter year, for reasons for denial of the taxpayer's contentions as to the March 1, 1913, value of the properties sold.

INVENTORY VALUATIONS AT DECEMBER 31, 1920

Although the only questions raised by the taxpayer with respect to inventories affected the valuations at December 31, 1918, the bureau made a further check of the closing inventories for 1919 and 1920, in order to discover any errors that might have occurred in the valuations previously used in the handling of the case.

The bureau made no change whatever in any of the figures used by the taxpayer in valuing the December 31, 1919, inventory, for two reasons: (1) Market prices at December 31, 1919, generally speaking, were lower than cost, and (2) any disallowance of market write-downs or other changes that the bureau might make in the December 31, 1919, inventory valuations would have no appreciable effect on tax liability since the tax rates applicable to the United States Steel Corporation are the same for both 1919 and 1920.

With respect to the December 31, 1920, inventory valuations, however, the bureau examined each company on which the question of a write-down from cost to market had been raised at any time. In all, 13 companies had revised parts of their inventories downward. The bureau in its prior audit of the case disallowed parts of write-downs on 9 of the 13 companies. The entire disallowance was on stores, supplies, refractories, short-life equipment, etc., which items are held not subject to the rules for valuing inventories, but are deferred charges which must be carried at cost until used. (Burroughs Adding Machine Co., 9 B. T. A. 938.)

After an examination of the write-downs on the 13 companies it is found that there were 3 whose adjustments of stores and supplies to market prices the bureau had previously failed to disallow. Also, there were two companies (National Tube Co. and American Sheet & Tin Plate Co.) whose adjustments on certain short-life equipment and supply items had been previously overlooked. It was therefore decided that there should be further disallowances of the December 31, 1920, reductions in inventory to correct these errors.

AMORTIZATION

In settlement of the case, as shown in the concurrent report of the year 1918, it has been agreed that the amortization should be applied against the net income from Government contracts, subject to tax at 1918 rates, pursuant to section 301 (c) of the revenue act of 1918. In accordance with such settlement a small amount of amortization has been apportioned to the year 1920.

INVESTED CAPITAL

The invested capital for 1920 has been placed upon the same basis as for the preceding years, subject to changes made necessary by current audit revisions of the prior years and by sundry minor corrections. The taxpayer has agreed to this disposition of the matter, in order to accomplish an early closing of the entire case. Certain of the adjustments that have been specially considered are noted below:

ACCURED DEPRECIATION—INDIANA STEEL CO.

The issue raised by the taxpayer as to the depreciation claimed by the bureau to have accrued on certain assets of the Indiana Steel Co. prior to completion of their construction, which accrual was used by the prior audits to reduce invested capital, has been discussed in the concurrent report on the year 1918. Disposition of the matter is made for this year in harmony with the adjustment made for 1918.

DEPRECIATION BASE REDUCED BY TENTATIVE AMORTIZATION AND INVESTED CAPITAL REDUCED BY TENTATIVE AMORTIZATION

At the time the bureau made its former audits covering the years 1919 and 1920 the final determination of the allowance for amortization of war facilities had not been made. In order to protect the interests of the Government against the running of the statute of limitations (as extended by the waivers then on hand) the bureau increased income reported, for each of the years 1919 and 1920, and reduced the invested capital reported for each of these years. These adjustments were made on the theory that the maximum possible deduction for amortization which might eventually be allowed would not exceed a certain sum, and that the total allowance might be deductible from 1918 income. The decrease in invested capital is a net figure and represents the difference between the estimated maximum possible 1918 amortization allowance and depreciation for 1918 on estimated amortizable cost.

The taxpayer now requests that these adjustments be reversed and in their place be substituted similar adjustments based on the correct amortization allowance as finally determined.

It is the regular practice of the bureau to make such a correction sua sponte when amortization is finally determined, so that the taxpayer's request is granted.

REDUCTION FOR STOCK PURCHASED

The taxpayer objected to the bureau's action in reducing invested capital on account of purchases of its own stock during the year, notwithstanding that the current earnings, at dates of purchases, exceeded the purchase price. In the travel audit report of February 12, 1917, the bureau reduced invested capital by the amount of treasury stock purchased during the first 60 days of 1920, averaged from the respective dates of purchase. In a subsequent audit letter the bureau restored a part of the former reduction, on the ground that under the provisions of article 862, regulations 45, a reduction was required only to the extent that such stock was not purchased out of current earnings for 1920.

Upon amendment of article 862, in T. D. 4102, VI-2, C. B. 291, dated November 23, 1927, the bureau 60-day letter of December 20, 1927, reduced 1920 capital because information was not then available showing the dates and amounts of stock purchases after February 29, 1920, and the adjustment was confined to stock purchased before that date.

Since the revised regulation is still in force, the bureau has adhered to its instructions, and the taxpayer has yielded in order to obtain an early settlement of the whole case. It may be observed that if capital were in any wise increased through allowance of additional value for assets acquired with stock at April 1, 1901, over the bureau's prior allowance, the reduction to the capital on account of this item would be correspondingly increased.

SUMMARY

In order to effect a settlement of the entire case the taxpayer has conceded numerous items which have been previously claimed before the department. For example, one refund claim for 1919 contains some 10 pages of items claimed as proper grounds for tax paid for that year. The changes claimed in net income are some 57 in number and the changes claimed in invested capital are some 95 in number.

Some of the numerous concessions made by the taxpayer may be mentioned, as follows: Inclusion in income for all three years of aliquot parts of premiums on bonds paid prior to these taxable years; inclusion of income from operation of leases from a State or political subdivision thereof; inclusion in inventories of Oliver Iron Mining Co. of taxes paid on properties each year; concessions with respect to the basis for adjustments of inventories of the American Steel & Wire Co.; inclusion in income of gain on sale of lands by H. C. Frick Coke Co.; a number of concessions with respect to amortization of war facilities; withdrawal of claim for additional depreciation on assets of Carnegie Steel Co.; and such other items as so-called donations to hospitals and welfare agencies.

Additional considerations in support of the settlement are as follows:

- (a) If settlement out of court is not effected, substantial concessions made by the taxpayer will be withdrawn.
- (b) The taxpayer may be expected to raise additional issues, with considerable probability of success in reducing the tax now computed.
- (c) Litigation in court would involve great delay and expense to both sides, regardless of the outcome.
- (d) Overassessment being admitted of material amounts, interest would accrue thereon at the rate of 6 per cent per annum during litigation.
- (e) Until the amortization deduction has been determined, later years can not be closed upon a satisfactory basis, and statutes of limitation may toll in the meantime, with interest accumulating on any overpayments.

After an extensive investigation of this case, with its numerous features and the impressive size of the various items involved, it is believed that the settlement effected is an exceptionally favorable one, from the standpoint of the Government's interests.

Respectfully,
ELLSWORTH C. ALVORD,
Special Assistant to the Secretary of the Treasury.

Hon. WESLEY L. JONES,
*Chairman Committee on Appropriations,
United States Senate.*

During the course of Mr. HAWLEY's remarks the following colloquies occurred:

Mr. GARNER. Will the gentleman yield?

Mr. HAWLEY. Yes; I yield.

Mr. GARNER. The gentleman concedes, however, that in 1917 they moved to affirm and indorse the settlement made by the Treasury? That is correct, is it not?

Mr. HAWLEY. They voted not to disturb the settlement.

Mr. GARNER. No. I asked the gentleman if the vote was not made that they indorse the settlement made by the Treasury Department?

Mr. HAWLEY. Well, whatever language was used, that was the effect.

Mr. GARNER. And the vote failed to carry?

Mr. HAWLEY. Yes. There was 4 to 4 vote. One gentleman declined to vote and one gentleman was absent.

Mr. GARNER. In this recent arrangement the gentleman from Oregon, the Chairman [Mr. HAWLEY] was the only Republican there at the time the settlement was concluded?

Mr. HAWLEY. Yes.

Mr. GARNER. And the gentleman had to make a motion to himself and second the motion and then agree to it?

Mr. HAWLEY. I did not make a motion. I did not second it. I asked what the committee would do, and then I said that the expression of opinion of five members not to disturb the settlement having been made, the chairman would write a letter to the Treasurer, which I did, reading:

I am to say that the committee will not disturb this settlement.

Mr. GARNER. May I ask the gentleman if we could have had a vote of those present that day, and the gentleman from Texas had made a motion not to concur in the settlement, we would have outvoted you, would we not?

Mr. HAWLEY. If there had been a motion made to disturb the settlement, I think that would have been of sufficient importance to have adjourned the meeting until all the Members were present.

Mr. GARNER. How could the gentleman adjourn the meeting when there were two to one against adjournment?

Mr. HAWLEY. But, three present would not constitute a quorum unless proxies were counted.

Mr. GARNER. But, we could still refuse to adjourn. Just because there is not a quorum present does not authorize you to adjourn.

Mr. HAWLEY. I should have said we would have continued the meeting until the other Members or a quorum were present. I do not think it makes any difference whether they were present there if five Members said they would not disturb the settlement. Five is a majority of nine. That was the determination, no matter what procedure obtained. This question of whether they expressed themselves by one method or the other, when they had expressed themselves plainly and positively, is not material as an issue.

Mr. COLLIER. Will the gentleman yield?

Mr. HAWLEY. I yield.

Mr. COLLIER. The gentleman from Texas [Mr. GARNER] has tried to ridicule the meeting that was held, and I want to say in behalf of the committee and in behalf of the chairman, that we had ample precedent for that meeting. If any of you gentleman will listen at 7 o'clock any night, you will find that in the meetings of the Fresh Air Taxicab Co. exactly the same procedure is adopted. "The meeting is called to order. All in favor say aye. Motion carried, and meeting adjourned," and Mr. GARNER and I walk out wagging our heads and muttering to ourselves, "We are regusted." [Laughter.]

Mr. GARNER. Whoever got that up for you has gotten it up wrong. I do not know who it was, but you should correct him.

Mr. HAWLEY. Will the gentleman proceed with his question, if he has one?

Mr. GARNER. If the gentleman will recall, the reason the tie occurred was because there are four Democrats and six Republicans on the joint committee. Is not that correct?

Mr. HAWLEY. Yes.

Mr. GARNER. And the four Democrats voted against confirming the Senate settlement, and Senator REED declined to vote for it. That is the record of the vote, and as a result it stood 5 and 5, and the five "me-too," Senators and Congressmen on that committee, carrying out the wish of the Treasury Department, voted to confirm what the Treasury did, but the four Democrats voted against it and Senator REED declined to vote affirmatively to approve it.

Mr. HAWLEY. Does the gentleman from Texas say that a Senator did not challenge him to make a certain motion?

Mr. GARNER. Oh, certainly, because he wanted the record to show that the vote failed because it did not get a majority; it only got 5 and 5, and therefore it would not have been lost.

Mr. BACHARACH. If the gentleman will permit, I just want to point out to the gentleman from Texas that Senator REED did not vote for the approval of it because at one time he had been connected with this particular corporation as its attorney, but he did not say it was not a fair and equitable settlement.

Mr. GARNER. But he did decline to approve it by an affirmative vote.

Mr. HAWLEY. He asked to be excused from voting because of his former connection with this company as attorney.

Mr. GARNER. Will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. GARNER. At the conclusion of the hearing, did not the gentleman from Oregon, the chairman, ask me what I thought ought to be done in the premises, and did I not say then that I thought it should be referred to the court for a final decision?

Mr. HAWLEY. The statement I made was that the gentleman did not make a motion to that effect.

Mr. GARNER. I could not, because the gentleman announced he had five proxies and that he wanted to confirm it. Now, what would have been the idea of my making such a motion and Mr. COLLIER and myself voting for it, when the chairman had announced he had these proxies. However, did I not state to the gentleman, to the experts, and to the Assistant Secretary of the Treasury that if I had my way in this case I would refer it to the courts for a final decision.

Mr. HAWLEY. The gentleman had an opportunity of presenting that directly to the committee and having it determined by a vote.

Mr. GARNER. But did I not make that statement?

Mr. HAWLEY. Oh, the gentleman makes many statements he does not carry into effect.

Mr. GARNER. Did I not make the statement that if I had my way I would refer it to the courts?

Mr. HAWLEY. Then why did not the gentleman propose a motion?

Mr. GARNER. The gentleman will not answer "yes" or "no."

Mr. HAWLEY. I said the gentleman makes many statements. He made that statement, and he makes many others that he does not carry into effect, as I am going to show later.

Mr. GARNER. I can not carry them into effect because I can not control a majority of the committee.

Before the gentleman proceeds further, will he not tell the circumstances under which the Baldwin Locomotive Co. was allowed a refund for 1912 and intervening years?

Now, out of the thousands and thousands of corporations in the United States that come within the provisions of that law it appears from the record so far that only one could take advantage of that, and that happens to be in Pennsylvania.

Mr. HAWLEY. That question has not been brought to my attention in that form and I have no information further than I have here.

Mr. GARNER. Will the gentleman yield for a question?

Mr. HAWLEY. Yes.

Mr. GARNER. Will the gentleman tell me where he got his information about the total amount of taxation paid by Mr. Rockefeller?

Mr. HAWLEY. It was furnished to me by the staff.

Mr. GARNER. He is the only large taxpayer about whom we have information as to just how many Buffalo nickels he paid for that year?

Mr. HAWLEY. That I have not investigated and it has not come before the committee as yet.

I plead with the gentleman from Texas, I implore him to go to these two rooms of the Treasury that for years have been yawning and longing for his distinguished and companionable society; that he go down there and look at the books. Why have another committee appointed when there is a committee that already has as much power as any other committee would have and one of which he is a member.

The point I am urging is that twice on the floor of this House the amiable and enthusiastic gentleman from Texas, who sometimes in his enthusiasm breaks loose from his anchor, has talked about lack of information on his part, and yet the Treasury Department, in which all the information is to be found, is open to him, together with assistance of a staff of experts, the chief of which aided Senator COUZENS in his report and wrote the report that Couzens committee adopted. The chief of staff is ready to accompany the gentleman from Texas and help him discover all the questions involved in these matters upon which we have to act. This is what I can not understand, and I do not think the country can understand, why complaint should be made on the floor of this House when the complainant should apply the complaint to himself.

Mr. TREADWAY. Will the gentleman yield there?

Mr. HAWLEY. Yes.

Mr. TREADWAY. Would the gentleman give us some idea as to the length of time that would be required of any congressional committee to investigate the returns that are on file in the two rooms of the Treasury that he speaks of?

Mr. HAWLEY. The two rooms are of good size and are lined with filing cases, with shelves around the walls, and with tables on which the papers are laid. The books for the amortization alone, each about 24 inches long, 14 inches high, and 5 inches thick, consist of 30 volumes; this is on just the one

item of amortization, which is not the largest item. The invested capital, going back over a period of 60 years in the case of many of these corporations, is a large item also. The gentleman from Massachusetts and others can guess about how long it would take some one to go through this labyrinth without a guide; but we have a guide. We have a guide who has been over all these books, who has examined them, who has made a well-digested report upon these refunds, who has consulted the Treasury on every disputed point. I urge, I plead, oh, I would do almost any extraordinary thing to get the gentleman from Texas to go down there and relieve himself of the burden of lack of knowledge under which he is suffering. [Applause.] If one guide is not enough, I will get the gentleman several.

FIVE-DAY WEEK FOR UNITED STATES WORKERS

Mr. MEAD. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the subject of the 5-day week.

The SPEAKER pro tempore (Mr. LUCE). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MEAD. Mr. Speaker, we are experiencing another unemployment crisis even more serious than that of 1921 and 1922 and yet not a single constructive effort has been accomplished to cope with it. We are as unprepared to-day as we were in 1921 and 1922 when Mr. Hoover, then Secretary of Commerce, was chairman of the President's conference on unemployment. At that time Mr. Hoover said:

There is no economic failure as terrible in its import as that of a country possessing a surplus of every necessity of life in which numbers, willing and anxious to work, are deprived of these necessities. It simply can not be if our moral and economic system is to survive. * * *

What our people wish is the opportunity to earn their daily bread, and surely in a country with its warehouses bursting with surpluses of food, of clothing, with its mines capable of indefinite production of fuel, with sufficient housing for comfort and health, we possess the intelligence to find solution. Without it our whole system is open to serious charges of failure.

The one effort advanced by the President to stimulate construction has proven ineffective because it was launched after the depression was upon the country. To be effective such an effort must be based on long-range planning as suggested in a measure introduced by Senator WAGNER and several Members of the House.

When consumption lags behind production, as is the case at present, the power of the masses to consume must be increased. In other words, wages, the money equivalent of power, must be increased. Increasing salaries of Federal employees and reducing their hours of service is the example the Federal Government should set for private employers to follow. The increased productivity of the workers in public and private enterprise justifies substantial salary increases.

Thirty years ago private business began to give its employees Saturday half holidays, and yet to-day we find the majority of Government employees working six days a week. Bills now pending in Congress granting postal workers Saturday half holidays are vigorously opposed by the administration as being in conflict with the President's program of economy. Instead of being a lagard, the Federal Government should lead the way and set the example for private employers. This could be done by granting our workers both in the District of Columbia and throughout the United States a 5-day week without any reduction in the present scale of wages. Ford, Raskob, Edison, Irving Fisher, Miss Frances Perkins, and other authorities have advocated the 5-day week. Approximately 1,000,000 workers in the United States enjoy two days of rest each week. And this number is constantly increasing.

The unemployment problem is the most serious question of the day. Unless it is intelligently settled, our political and economic system can not survive. With industry geared to furnish the Nation's needs in 8 months, what are we to do with the workers who must live 12 months in every year? Issuing optimistic statements, passing a tariff unfair to the farmer, and increasing tremendously the cost of living will not correct the evil. Passing a public building bill will increase activity in the building trades, but it will not give a worker employment in the textile mills, on the railroads, or in our foundries, who has been supplanted by labor-saving devices.

Shorten the hours, raise the wages, and give the worker his share of the fruits of the machine age in which we live—and do it now. Pass the bills now pending in Congress providing for long-range planning of public work, increasing the scope of the Bureau of Labor Statistics, and creating a national system of employment exchanges; and be prepared for the future. The Kendall bill granting Saturday half-holidays to postal workers

should become a law. It is either this program now or doles later. Starvation, grief, and misery are as hard to endure in a republic as in a monarchy or soviet state. Patriotism and poverty are seldom friends. Let us answer the so-called communists by intelligently and sympathetically dealing with the problem rather than by beating them with clubs. Either we solve the problem now or it will be given to others to solve for us. Work, not charity, is what the masses now unemployed want and to aid them in securing work is an all-important function of government.

REGULATION OF MOTOR-BUS CARRIERS

Mr. PARKER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 10288) to regulate the transportation of persons in interstate and foreign commerce by motor carriers operating on the public highways.

The question was taken; and on a division (demanded by Mr. RANKIN) there were—ayes 110, noes 3.

Mr. RANKIN. Mr. Speaker, I object to the vote on the ground that there is no quorum present, and I make the point of order that there is no quorum present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and thirty-five Members present, a quorum.

So the motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 10288, with Mr. MICHENER in the chair.

The Clerk reported the title of the bill.

Mr. MAPES. Mr. Chairman, I offer the following amendment, which I send to the desk.

Mr. HASTINGS. Mr. Chairman, I have an amendment pending at the desk.

The CHAIRMAN. The Chair is advised that the gentleman from Oklahoma [Mr. HASTINGS] has presented an amendment, which has been read but which has not been offered. It is therefore not pending.

Mr. HASTINGS. Mr. Chairman, it was offered and was pending, and the Chair stated that the amendment would be pending.

The CHAIRMAN. The present occupant of the chair is informed that the gentleman from Oklahoma offered an amendment as a substitute for the amendment offered by the gentleman from Michigan [Mr. MAPES]; that a point of order was made to the substitute as offered by the gentleman from Oklahoma, and that the point of order was sustained.

Mr. HASTINGS. Then the Chair is misinformed. There was not any point of order made to it and no point of order was sustained. The amendment is still pending.

The CHAIRMAN. The present occupant of the chair was not in the chair when the committee rose, but is informed by the authorities who have charge of the record that the Chair stated the record as it appears.

Mr. HASTINGS. Mr. Chairman, I do not want to be contentious about it, but the Chair is misinformed. The present occupant of the chair was not in the chair at the time. There was no point of order made to the amendment and sustained. I said then that the motion would be withheld, and the then occupant of the chair said it would be pending, and the Mapes amendment was then presented and discussed and finally voted on.

Mr. MAPES. Mr. Chairman, my recollection of the situation is exactly as the Chair has stated it. I think a reference to the RECORD will show that the Chair is correct; but the gentleman from Oklahoma will have a chance to offer his amendment later.

Mr. HASTINGS. Let the RECORD be read. The Chair announced that my amendment would be pending, and I said that would be perfectly agreeable; then, that we take up the Mapes amendment.

Mr. MAPES. Mr. Chairman, I made the point of order, and the RECORD will so show. Just as to what transpired after that, I am not so clear.

Mr. BURTNES. Mr. Chairman, let me suggest that at that time, as I recollect it, the gentleman from Michigan [Mr. MAPES] made the point of order to the amendment offered by the gentleman from Oklahoma [Mr. HASTINGS] as a substitute. It was then agreed that the amendment would not be offered as a substitute, which made it unnecessary to pass upon the point of order, and the gentleman from Oklahoma [Mr. HASTINGS] asked whether the amendment could be read and be considered pending, or something of that sort.

Mr. HASTINGS. And the Chair announced that it would be pending.

Mr. BURTNESS. But not that it was offered in any sense at that time. It was not actually offered, it was sent to the Clerk's desk and considered pending.

The CHAIRMAN. As the Chair understands the situation, the amendment offered by the gentleman from Oklahoma was read and pending, but not offered.

Mr. GREEN. If it was pending, is not the amendment before the House?

The CHAIRMAN. Not necessarily.

Mr. HASTINGS. Mr. Chairman, my understanding is clear that the amendment would be pending, to be taken up immediately on the disposition of the Mapes amendment.

Mr. MAPES. Mr. Chairman, I had no such understanding with the gentleman.

Mr. RAYBURN. Mr. Chairman, let us refer to the RECORD. I read from the RECORD, on page 5342, RECORD of March 14, 1930:

Mr. HASTINGS. Mr. Chairman, I want to offer a substitute, which I send to the desk.

The amendment then offered by Mr. HASTINGS was read by the Clerk. Then, Mr. MAPES said:

Mr. Chairman, I make a point of order that the amendment is not germane.

The CHAIRMAN. The proposed amendment is of a wider scope than the amendment of the gentleman from Michigan, but it might be offered as a separate and independent amendment, in the judgment of the Chair.

Mr. HASTINGS. If that is the view of the Chair, I ask permission to withdraw my amendment.

Mr. HASTINGS. But read further on. The Chairman at that time said:

The amendment may be considered as pending until the amendment offered by the gentleman from Michigan is disposed of.

The CHAIRMAN. The Chair is ready to rule. It appears to the Chair from the RECORD that Mr. HASTINGS said:

If that is the view of the Chair, I ask permission to withdraw my amendment.

Mr. HASTINGS. But permission was not granted.

The CHAIRMAN. The Chair quotes further from the RECORD.

The CHAIRMAN. The amendment may be considered as pending until the amendment offered by the gentleman from Michigan is disposed of.

The Chair, according to the RECORD, never recognized the gentleman from Oklahoma for the purpose of offering an amendment. If that is true, then no amendment was offered at any stage, from the parliamentary view. It was sent to the desk by a Member who had not been recognized for that purpose. If that is the situation, then the Chair would be constrained to hold that the amendment at most would be an amendment lying on the Clerk's desk, to be called up by the gentleman from Oklahoma when he was recognized for that purpose.

Mr. HASTINGS. How does the Chair interpret the last two lines more than halfway down in column 2 on page 5342, where the Chairman said—

The amendment may be considered as pending until the amendment offered by the gentleman from Michigan is disposed of.

Now that was in reply when I asked permission to withdraw the amendment. The Chair said:

The amendment may be considered as pending until the amendment offered by the gentleman from Michigan is disposed of.

The CHAIRMAN. That is what the Chair stated, and when the Chair recognized the gentleman from Oklahoma to offer his amendment it would be in order. The Chair never heard of the amendment. The Chair feels that under the rules the Chair should recognize the gentleman from Michigan to offer the amendment.

Mr. MAPES. Mr. Chairman, I do not want to enter into any controversy with the gentleman from Oklahoma on a question of recognition. I had in mind an amendment in addition to the one that was adopted the other day just before the committee rose. This amendment simply carries out the program of the minority members of the Committee on Interstate and Foreign Commerce, as heretofore announced. I had no desire to contest the right of the gentleman from Oklahoma to recognition. I was simply trying to complete the program of the minority members of the committee.

The CHAIRMAN. The gentleman from Michigan is recognized. The Clerk will report the amendment:

The Clerk read as follows:

Amendment offered by Mr. MAPES: Page 7, line 16, after the word "States" in the amendment previously adopted, insert "and the com-

mission may, in its discretion, when operations of common carriers by motor vehicle conducted or proposed to be conducted involve more than three States."

Mr. MAPES. Mr. Chairman, the minority members of the Committee on Interstate and Foreign Commerce, who thought that the bill as reported by the majority of the committee was too restrictive, so far as the jurisdiction of joint boards is concerned, stated in their views, which are attached to the majority report, that during the consideration of the bill two amendments would be offered one to make it compulsory to refer to joint boards matters involving the operations of busses when not more than three States were concerned, instead of limiting such reference to cases where two States only were involved. That amendment was offered and adopted just before the committee rose on Tuesday. This amendment carries out the further intention of the minority members of the committee and authorizes the Interstate Commerce Commission, in its discretion—that is, if it sees fit to do so—to refer matters arising out of the operation of motor busses, when they involve more than three States, to the joint boards.

Those who concur in these views think the amendment adopted on Tuesday materially improves the bill, and with this amendment they think that the bill is a very desirable piece of legislation and should be enacted into law without material change.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. MAPES. Yes.

Mr. MOORE of Virginia. This body has already required that there should be a reference to the joint board when three States are involved. It is confined to boards representing three States. If the joint board finds that that is a satisfactory plan, a workable plan, can there be any reason stated why they should not have discretion as the gentleman proposes?

Mr. MAPES. I can not see any reason why they should not.

Mr. MOORE of Virginia. On the other hand, if they find the plan of the joint boards is unworkable, they need not use that discretion?

Mr. MAPES. That is correct.

There has been something said about uniformity of action with reference to the regulation of these motor busses. The Interstate Commerce Commission in all cases is required to lay down rules and regulations governing the joint boards, and all matters have to be presented to the Interstate Commerce Commission and be referred to the joint boards before the joint boards have any authority to act. It seems to me that the procedure set up is as good as can be suggested, and that there can be no objection to giving the commission this additional power to refer matters to the joint boards where more than three States are involved, if it sees fit to do so.

Mr. ABERNETHY. Mr. Chairman, will the gentleman yield?

Mr. MAPES. Yes.

Mr. ABERNETHY. If the commission thought it wise, there might be as many as five States represented in a joint board?

Mr. MAPES. Yes.

Mr. RANKIN. Then this amendment does not affect in any way the amendment we previously adopted?

Mr. MAPES. Not at all.

Mr. PARKER. Mr. Chairman, the views of the majority of the committee are very well set out in the report on the bill. The views of the minority apparently appeal to the judgment of the Committee of the Whole; and that being the case, while the majority think it is a mistake to do what is going to be done, yet I move that all debate on this amendment be now closed.

The CHAIRMAN. The gentleman from New York moves that all debate on this amendment be now closed. The question is on agreeing to that motion.

The motion was agreed to.

Mr. HASTINGS. Mr. Chairman, I would like to have the amendment rereported. With the gracious permission of the Chair I ask if the Chair will kindly permit the amendment to be rereported?

The CHAIRMAN. Without objection, the Clerk will again report the amendment offered by the gentleman from Michigan [Mr. MAPES].

The Clerk read as follows:

Amendment offered by Mr. MAPES: Page 7, line 16, after the word "States" in the amendment previously adopted, insert "and the commission may, in its discretion, when operations of common carriers by motor vehicle conducted or proposed to be conducted involve more than three States."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MAPES. Mr. Chairman, I have one or two amendments merely perfecting the language.

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. MAPES: Page 6, strike out lines 13 and 14 and line 15 through the comma and insert in lieu thereof the following: "(c) Whenever there arises under the administration of this act any matter that the commission is required to refer to a joint board, or that the commission determines, in its discretion, to refer to a joint board, as hereinafter provided."

Mr. WINGO. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. WINGO. The gentleman probably answered my question in answering the inquiry of the gentleman from Virginia [Mr. MOORE]. Will it be a fact that where there are three States or two States involved the joint commission is mandatory, and, where there are more, it is discretionary?

Mr. MAPES. That is correct.

Mr. WINGO. If there are four or five or more States, no jurisdiction vests in the joint board unless the commission sees fit to refer it to it?

Mr. MAPES. That is correct. This provision in the bill as it stands simply provides for compulsory reference, and the amendment which I have offered is simply to perfect the language to make it apply also in case the commission, in its discretion, sees fit to refer matters to joint boards where more than three States are involved.

Mr. WINGO. With three or less States it is mandatory; with more than three it is discretionary.

Mr. MAPES. The gentleman has stated it correctly.

Mr. LEA of California. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. LEA of California. I understand that under the amendment adopted yesterday or the day before, in order for the bonds of a carrier to be approved, it would be necessary to assemble the representatives of State commissions for three States or two States. That is true, is it not?

Mr. MAPES. That is true.

Mr. LEA of California. Would not the gentleman consider offering an amendment to relieve that situation?

Mr. MAPES. I think so; yes. That would appeal to me.

Mr. LEA of California. It should not be necessary to assemble two or three States to approve a bond.

Mr. DENISON. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. DENISON. That is only one instance that is not in harmony with the purpose of the bill. For instance, if there is a complaint made that a driver is being worked beyond the hours allowed by the commission, in order to settle the questions arising out of that complaint the commissions of three States will have to summon a joint board composed of commissioners of three States and they will have to settle the question.

Mr. STAFFORD. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. STAFFORD. I challenge the statement of the gentleman from Illinois [Mr. DENISON] that that is necessary under the provisions of the bill. Will the gentleman kindly state where there is such a provision contained in the bill?

Mr. DENISON. I will if I have time.

Mr. STAFFORD. Well, we have plenty of time.

Mr. RAYBURN. It is at the bottom of page 7.

Mr. MAPES. I understand some of the Members have given consideration to the question raised by the gentleman from California [Mr. LEA], and I think it might be desirable, if the gentleman has an amendment in mind, that he should offer it.

Mr. LEA of California. I have no amendment prepared at this time.

Mr. MAPES. But it is not desired that this entire question of reference to joint boards where more than two States are involved be opened up for debate again.

Mr. LEA of California. May I suggest to the gentleman from Michigan [Mr. MAPES] that he consider this problem of taking care of these small questions, and if necessary offer an amendment later to take care of it.

Mr. MAPES. I shall be glad to do that.

Mr. BURNESS. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. BURNESS. Let me suggest to the gentleman from California [Mr. LEA] that the only bond that is ever required is the original bond and is furnished under the language found on page 8 on the issuance of the certificate. It is really a part of the original procedure.

Mr. LEA of California. Of course, there may be a withdrawal of a bond or the renewal of a bond or a higher bond required. So I think if the gentleman from Michigan will follow the course suggested it will be satisfactory.

Mr. MAPES. It clearly needs some consideration before action is taken.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. MAPES].

The amendment was agreed to.

Mr. RAYBURN. Mr. Chairman, in order that there may be no misunderstanding about what we have done, and following up the assertion made by the gentleman from Illinois [Mr. DENISON], I might read from the bill what the State boards may be called together upon or any one of which may be called upon to do. The bill reads:

Applications for the issuance of certificates of public convenience and necessity (except in so far as the action upon such applications is based solely upon answers to questionnaires and information furnished to the commission, as provided in section 5 (b)); the suspension, change, or revocation of such certificates; applications for the approval and authorization of consolidations, mergers, and acquisitions of control; complaints as to violations by common carriers by motor vehicle of the requirements established under section 2 (a) (1); complaints as to rates, fares, and charges of common carriers by motor vehicle; and the approval of surety bonds, policies of insurance, or other securities or agreements for the protection of the public, required on the issuance of a certificate.

Now, one of these boards from two States or three States can be called into being, with all of the necessary expense, for either one or all of these things set forth. That is what we have done by the adoption of the amendment offered by the gentleman from Michigan, in my opinion.

Mr. MAPES. Will the gentleman yield?

Mr. RAYBURN. I yield.

Mr. MAPES. I do not want to get into a discussion of this matter again, but the gentleman will understand that most of these things are major matters, such as the filing of a certificate, the matter of a merger of competing lines, rates, fares, and charges to be assessed, and the approval of policies of insurance and securities. They are practically all major matters which the gentleman has read.

Mr. RAYBURN. It is satisfactory. I was just reading what these State boards could be called together to consider.

Mr. MAPES. Certainly. I do not want to open up the debate on that question again.

Mr. RAYBURN. The House has already passed the amendment, but there was some controversy as to what matters could be referred to one of these joint boards.

Mr. HUDDLESTON. Will the gentleman yield?

Mr. RAYBURN. I yield.

Mr. HUDDLESTON. The gentleman used the word "may" be called together. The gentleman means, of course, that they must be called together. In short, there is no discretion. It is mandatory that all of these matters must be considered by the board.

Mr. RAYBURN. The gentleman is correct. Where three States are involved those boards must be set up. The reason I used the word "may" was to illustrate what could be done where all States are involved, and, as the gentleman from Alabama says, it must be done where three States are involved.

Mr. HUDDLESTON. In short, if somebody complained of a rate, no matter how trifling the complaint might be, one of these joint boards must be raised, must have the hearings, and must settle the question.

Mr. RAYBURN. That is what we have done by adopting the Mapes amendment.

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 7, line 4, strike out the word "unanimous" and insert in lieu thereof the word "majority."

Mr. MAPES. That amendment seems desirable, in view of the fact that the joint boards are to have jurisdiction where more than two States are involved.

Mr. DENISON. Will the gentleman yield?

Mr. MAPES. Yes.

Mr. DENISON. I would like to ask what would be a majority of a board composed of two members, and that will be the board where there are only two States.

Mr. MAPES. In that case "majority" would, of course, be synonymous with the word "unanimous."

Mr. DENISON. It would have to be unanimous in that case?

Mr. MAPES. Yes.

Mr. DENISON. Of course, the same thing would apply in the case of four States.

Mr. MAPES. Where there are four States, of course, three would be a majority.

Mr. PARKER. Mr. Chairman, I move that all debate on this amendment close in five minutes.

The CHAIRMAN. The gentleman from New York moves that all debate on this amendment close in five minutes.

The motion was agreed to.

Mr. RANKIN. Mr. Chairman, I rise in opposition to the amendment. I am not in favor of this amendment. We have some other perfecting amendments which another minority hopes to get adopted, so that we will further strengthen the power of these State boards, and also we hope to make the decisions of those joint boards final when approved by the boards of their respective States.

I am not willing to give to two States the right to impose their will upon another one. I want to leave this provision in the bill as it now stands and then where there are three States involved—as there will be invariably, and very seldom more than three—they may iron out their differences without two States overriding the will of the third State.

Mr. MAPES. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. MAPES. Of course, if one State disagrees with the findings of the joint board, it can appeal the matter to the commission and the order of the joint board in that case does not go into effect until the commission passes on it.

Mr. RANKIN. I understand that is true under the present provisions of the bill, but under amendments which we hope to get adopted, which would leave the decision to the State boards and give them the final decision, that will not be the case.

I hope this amendment will be voted down. If that were your policy, why did you come in in the original bill and say that all of the votes on these joint boards must be unanimous?

Mr. BURTNESS. For the simple reason that the bill as reported covered only two States, and therefore it had to be unanimous. That is the only reason. The original bill, introduced by the gentleman from New York [Mr. PARKER] at the beginning of the session, which contemplated the using of joint boards generally, provided for a majority, just as the Mapes amendment does.

Mr. RANKIN. This morning I was talking with a gentleman from Colorado and we had this identical question up. He said: "Here is Missouri and Kansas. Suppose they agree on a regulation that suits the States of Kansas and Missouri but does not suit us? They would have a right to override the will of the people of Colorado and enforce the will of those other States upon them."

Now, the States are getting along very well as it is. Adjoining States are agreeing on all these matters that affect them jointly. I submit that if we are going to have three or five States involved, we ought to make the findings of those States unanimous.

Mr. DENISON. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. DENISON. That danger is inherent in this policy. Whenever there is a difference of opinion among the States it ought to be settled by the Federal Government and not by the other States.

Mr. RANKIN. Oh, I do not agree with that. I know there are all kinds of interstate questions arising whereby even our States are required to make treaties with each other and do make treaties with each other, but when we do finally arrive at a decision it is a unanimous decision and everybody is satisfied. There is no friction, and there is no contention that one State is imposing upon another; and then, also, we do not call in the power of the Interstate Commerce Commission or the Federal Trade Commission to fix regulations that probably will not be satisfactory to any one of the three.

I hope the amendment will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. MAPES].

The amendment was agreed to.

Mr. HASTINGS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Oklahoma offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. HASTINGS: On page 7, line 14, subsection (d), strike out all of subsection (d) as amended and insert in lieu thereof the following:

"(d) The commission shall, when operations of common carriers by motor vehicle conducted or proposed to be conducted between States are involved, refer to a joint board for hearing and decision and appropriate order thereon any of the following matters arising under the administration of this act with respect to such operations: Applications for the issuance of certificates of public convenience and necessity; the suspension, change, or revocation of such certificates; applications for the approval and authorization of consolidations, mergers, and acqui-

sitions of control; complaints as to violations by common carriers by motor vehicle of the requirements established under section 2 (a) (1); complaints as to rates, fares, and charges of common carriers by motor vehicle; and the approval of surety bonds, policies of insurance, or other securities or agreements for the protection of the public, required on the issuance of a certificate. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are vested hereinbefore in this section in members or examiners of the commission while acting under its orders in the administration of this act. Orders recommended by joint boards shall be filed with the commission and shall become orders of the commission and become effective as of date of filing with the commission."

Mr. PARKER. Mr. Speaker, I ask unanimous consent that the gentleman from Oklahoma may proceed for 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HASTINGS. Mr. Chairman, everyone, of course, appreciates the expanding, growing, motor-bus transportation industry. It has spread rapidly throughout the entire country. It will be greatly enlarged and utilized by the traveling public. Everybody appreciates that interstate bus transportation must be regulated to properly protect the interests of the public and the bus companies themselves. The amendment, therefore, that I offer only goes to the question of whether interstate bus transportation companies shall be regulated by joint boards composed of representatives of commissions of the respective States, or by the Interstate Commerce Commission, acting through examiners and subordinate employees.

Mr. BURTNESS. Will the gentleman yield before going into an explanation of his amendment?

Mr. HASTINGS. I yield.

Mr. BURTNESS. I could not follow the reading of the amendment. Is it substantially the language of the original bill?

Mr. HASTINGS. I am going to explain that.

Let me explain just what the proposed amendment does.

The amendment which I offer is a substitute for subsection (d) of section 3 on pages 7 and 8 as amended, and if adopted would permit joint boards to be appointed as Federal agencies in any number of States through which any motor bus is to run and confer upon these Federal agencies the authority to pass finally, upon the matters submitted to them as provided in this subsection.

In my judgment if a commission can be safely trusted to regulate motor-bus transportation within the State, then a representative of that commission, forming a joint board with the representatives of one or more additional States affected, can and should be trusted to regulate motor-bus transportation between those States affected. In my judgment there is no answer to this argument. It simply means you are willing to grant a larger measure of authority to the joint boards composed of representatives of the commissions representing the States through which these motor busses run.

In line 17 my amendment strikes out the words "recommendation of" so that the joint boards would be authorized to hear and decide the questions submitted and not make recommendations to the Interstate Commerce Commission. The amendment which I offer strikes out, after the word "necessity" in line 21, "except in so far as the action upon such applications is based solely upon answers to questionnaires and information submitted to the commission as provided in section 5 (b)."

This would leave the granting of applications to the joint boards rather than the submission to the Interstate Commerce Commission of applications accompanied by questionnaires. Surely the joint boards of two or more States, know the local situation, and the need of granting the applications, better than the Interstate Commerce Commission, the members of which have no personal knowledge of the situation and must be entirely governed by the recommendations of the joint boards or of examiners for the commissioners. Everyone knows that all of these details will be passed upon by examiners and subordinate employees of the Interstate Commerce Commission and that the members of the commission can not possibly have time to give detailed consideration to the thousands of applications, complaints, and other matters about which it will be called upon to enter orders.

The amendment which I offer strikes out, after the word "effective" in line 14, page 8, the words "and shall be subject to review by the commission in the same manner as provided in the case of members or examiners under this section," and inserts the words, "as of the date of filing with the commission," which would make an order of any joint board effective upon its being filed with the commission.

Subsection (c) of section 3, provides "all decisions and recommendations by joint boards shall be by majority vote."

These joint boards are made up of representatives of the commissions of as many as three States, as provided in this bill, and would be made up of representatives from all States affected, if my amendment is adopted and if they agree by a majority vote, surely it is safe for this order to be effective upon filing with the commission, without any further action by the commission.

These joint boards are selected by the commissions of each State, and in event of the failure to do so, by the governors of the respective States.

The joint boards will, therefore, be composed of men of responsibility and broad experience, and especially selected by their respective States, having in view their fitness and qualifications.

This bill gives these joint boards no final authority in any single detail. Every order of the joint board of every kind and character is subject to review and approval, and subject to be reopened and reconsidered, amended, modified, or set aside, by the Interstate Commerce Commission, and this, in practically all cases, upon the recommendation of an examiner or a subordinate employee of the commission, who will pass upon the work of the joint boards.

Will any Member of the House by his vote say that he would favor yielding to the judgment of an examiner for the commission or subordinate employee to review the work of any joint board? If you do, you are in favor of concentrating everything in Washington. If you are in favor of decentralization of power, you will leave the thousands of details with the joint boards and permit these joint boards to supervise interstate bus transportation and finally pass on every application or order affecting them, to the same extent that the respective State commissions pass upon intrastate bus transportation.

When the Esch-Cummins bill was up for consideration I called attention then to the fact that that bill practically took away much of the authority of the State commissions. Subsequent interpretation of the bill confirmed my criticism of it. Let me warn the House that the joint boards will be only fact-finding boards with no final authority, but will collect the evidence and report its views, and in the end all of the authority will be concentrated in the Interstate Commerce Commission in Washington. You who believe in a larger measure of local self-government and in a decentralization of authority in Washington ought to support an amendment which will have for its purpose giving practically all of the authority to local joint boards under the general supervision of the Interstate Commerce Commission.

There has been some discussion as to whether or not such final authority may be conferred upon these joint boards. In numerous colloquies with Members on the floor I have asserted that Congress has the power and can confer this authority upon joint boards as Federal agencies.

As to the power of Congress, I do not have any doubt.

Paragraph 3 of section 8 of Article I of the Constitution empowers Congress:

To regulate commerce with foreign nations and among the several States, and with the Indian tribes.

This interstate bus regulation is bottomed upon the authority conferred by this clause to regulate commerce among the several States and it will be seen that this same particular clause of the Constitution confers authority over Indian tribes.

Section 22 of the act of Congress of April 26, 1903, authorized conveyances by full-blood heirs of their inherited interest in lands allotted to members of the Five Civilized Tribes, with the approval of the Secretary of the Interior.

Oklahoma was granted statehood by proclamation issued on November 16, 1907, and thereafter, on May 27, 1908, Congress passed an act, section 9 of which amends section 22 of the act of April 26, 1906, by providing that—

No conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of such deceased allottee.

That amendment transferred the jurisdiction from the Secretary of the Interior to the county courts of Oklahoma, just as I would transfer the final authority in many matters from the Interstate Commerce Commission to the joint boards to be selected as provided in this bill.

The above-mentioned section 9 was construed by the Supreme Court of the United States in the case of *Parker et al. v. Richard et al.*, reported in Two hundred and fiftieth United States Report, page 235, where the court held that in respect to the approval of conveyances of full-blood heirs that the county courts acted as Federal agents.

At page 239 the court said:

That the agency which is to approve or not is a State court is not material. It is the agency selected by Congress and the authority conferred to it is to be exercised in giving effect to the will of Congress in respect of a matter within its control. Thus in a practical sense the court in exercising that authority acts as a Federal agency, and this is recognized by the supreme court of the State.

No appeal was provided from the county courts acting as Federal agents in the approval of these conveyances.

My amendment would not permit similar appeals, but would make final the decisions of the joint boards in all matters committed to their consideration which must be by a majority vote and over questions as to interstate transportation identical with the questions they pass upon within their respective States.

The amendment I have offered would constitute these joint boards as Federal agents to administer the authority granted to them by the terms of this bill. Every order and act of a joint board would be as a Federal agent. This question has been construed by the Supreme Court of Oklahoma in numerous cases. (*Tiger v. Lozier*, 256 Pac. 727; *Boyd v. Weir*, 253 Pac. 988; *Malone v. Wamsley*, 195 Pac. 484.)

The power, therefore, of Congress to pass such legislation would seem to be clear and undisputed.

No one to-day will hazard the extent of the expansion of motor-bus transportation. Thousands of individuals, companies, and corporations are making applications to their respective States for authority to transport passengers. They will gridiron every State and county and use every highway, State and Federal. Every State, with one exception, has enacted legislation to regulate motor-bus transportation within their borders. My State of Oklahoma has enacted legislation in an effort to safeguard the interests of the public, and I am sure that in the administration of our local law it will be found necessary to amend it from time to time. It will be much easier to enact legislation to regulate interstate motor-bus transportation now than to secure amendments later by Congress. We should be sure that this legislation is well considered and all the authority that can safely be intrusted to joint boards composed of local representatives from the respective States is given to them.

In my consideration of this bill I asked the recommendation of the Corporation Commission of Oklahoma, and to my inquiry asking for an expression of its opinion upon this bill I received the following telegram in reply:

OKLAHOMA CITY, OKLA., March 13, 1930.

Hon. W. W. HASTINGS,

Member of Congress, House Office Building,

Washington, D. C.:

The corporation commission favored the Parker bill regulating motor-bus interstate transportation as it was originally introduced. We understand that this bill has been amended in the House committee so as to provide that the State commissions will have no jurisdiction over any interstate line where more than two States are involved. We understand that some amendments will be offered to this bill which will give the State commissions jurisdiction to pass on applications where more than two States are involved and we think that the bill should be amended so as to provide that a body composed of a representative from each of the commissions affected by any interstate application should pass upon the application, with authority to grant or deny such application and permitting an appeal to the Interstate Commerce Commission if Congress thinks such an appeal should be granted. We feel that some act should be passed by Congress conferring jurisdiction on some body or commission to regulate the interstate motor carriers, but we feel that the States affected by such interstate motor carriers should be given original jurisdiction to pass on such applications.

CORPORATION COMMISSION,

By C. C. CHILDERS, Chairman.

My study of the bill had driven me to the same conclusion, and I had proposed the amendment before receiving the telegram from the commission.

This commission recommends the amendment which I have offered, which, in effect, enlarges the joint boards to more than two States and gives these boards the final authority to pass upon applications, although my amendment would not permit an appeal to the Interstate Commerce Commission. I think that the granting of these applications should be left to the joint boards, without an appeal.

The joint boards as this bill is reported are examining Federal agents, fact-finding bodies, forwarding bodies, with no final authority to do anything which is not subject to amendment, review, modification, or reversal by the Interstate Commerce Commission.

Without the adoption of the amendment which I have offered, there are only two justifications which one can find for voting for this bill:

First. The necessity of the regulation of motor-bus transportation denied by the decisions of the Supreme Court to the State commissions, so that this bill does not take away any authority from the State commissions over interstate bus transportation, because they have no authority now to take away. The bill does create joint boards as fact-finding commissions, to forward their views to the Interstate Commerce Commission, which, after interminable delays, causing much criticism of the commission, will finally be acted upon.

The second justification one may offer for voting this measure is the hope that before it is finally enacted that the Senate will insist upon more authority being granted to the local joint boards. I want to urge this upon the attention of the State commissions throughout the country in the hope that they will give study to this bill after it shall have passed the House and before its consideration in the Senate, so that the Senate may have the advantage of their study and recommendations of amendments to the bill. For my part I am unwilling to give my support to a bill which concentrates all final authority in the Interstate Commerce Commission.

I fear that Members of the House do not fully appreciate the great amount of additional work this bill will place upon the Interstate Commerce Commission. It is already greatly overburdened with work and the commission should be saved from the responsibility of the many details this bill places upon it. Every minor detail which could be with safety transferred to the several joint boards should be given to them to pass upon in the interest of expedition. I have no sympathy with the argument as to the expense of the joint boards. They would receive nothing additional from the Government for salaries and the only additional expense would be the attending of the meetings. These meetings, largely by the representatives of the two States, would be held at convenient times and places when a large number of applications and other matters would be brought to their attention, and hence the question of expense, in my judgment, is one of minor importance. Besides, we are providing for joint boards in three States and as to them there will be no additional expense because they must meet anyway, and, in my judgment, nine-tenths of the business transacted by the joint boards will be by the boards of only three States.

No Member who believes in local self-government can justify his vote against this amendment.

Let us examine how it would be administered if adopted. The commission would refer to the respective joint boards, as provided in subsection (d) of section 3, as amended, all applications for the issuance of certificates of public convenience and necessity, which means permission to do an interstate motor-bus transportation business; the suspension, change, or revocation of such certificates; applications and authorization of consolidations, mergers, and acquisitions of control; complaints as to violations by common carriers by motor vehicles of the requirements established under this act; complaints as to rates, fares, and charges of common carriers by motor vehicle; and the approval of surety bonds, and all other matters embraced within the provisions of this act.

It is admitted that 90 per cent of these matters would be passed upon by joint boards of two States. It is safe to say that 7½ per cent additional will be passed upon by joint boards of three States; hence in my judgment 97½ per cent of all of these matters over which joint boards will be given jurisdiction will be passed upon by joint boards of three States.

I emphasize this for the purpose of inviting attention to the fact that joint boards composed of representatives of more than three States will seldom be required to meet.

In actual practice the commission will give notice of the call of representatives of State commissions who will compose these several joint boards to meet at some central point, at which time they will be organized into as many joint boards as may be necessary, and there will be submitted to the respective boards the matters over which each would have jurisdiction. They would divide up into separate joint boards similar to the division of the Senate into its several committees, and the matters over which each board has jurisdiction would be assorted out, indexed, briefed, and passed upon rapidly by the respective joint boards. At this same general meeting a joint board of two States may meet in the morning and pass upon the matters referred to it, and in the afternoon these members may meet with other members, forming joint boards, for the consideration of matters over which those respective boards would have jurisdiction. Many matters referred to them would be routine and could be passed upon rapidly and in a short time. There would be necessity only occasionally for the joint assembling of the additional joint boards which the amendment I offer

would create. These boards would cause but little additional expense, as there would be no additional salary expense and only the expense of transportation and hotel accommodations incident to attendance upon the meetings.

If all of the representatives of the 48 States were to meet jointly and remain in session for 30 days, calculating their expenses, exclusive of transportation, including board, at the rate of \$7 per day allowed, the total expense incurred would aggregate \$10,080. The appropriation for the Interstate Commerce Commission for the current year is \$7,548,825. The independent offices bill, as passed by the House, carried \$8,322,650 for the coming year, and as reported by the Senate committee \$9,329,963.

If all of the representatives were to assemble once each month and remain in continuous session, exclusive of transportation, their expenses would amount to only \$120,960. The figures cited in the debate on this bill show an enormous amount already invested in motor-bus transportation. This is just the beginning. No flight of the imagination can vision the investment in motor transportation, including terminals, busses, and equipment, within the next generation. If this bill is enacted, a far larger sum than the figures I have given will be asked for the Interstate Commerce Commission to render the additional service which this bill will require.

If only group meetings of joint boards of two or more States are called occasionally, which, as I have estimates, would cover 97½ per cent of the cases, these boards from adjoining States could be assembled in 48 hours, all matters committed to them rapidly passed upon, a decision reached, and forwarded to the commission for filing, when it would immediately go into effect.

Mr. HOCH. Will the gentleman yield?

Mr. HASTINGS. I yield.

Mr. HOCH. Under the gentleman's amendment the decision of the joint board would be final and not subject to the review by the Interstate Commerce Commission.

Mr. HASTINGS. Exactly.

Mr. HILL of Alabama. Suppose they could not agree, what then?

Mr. HASTINGS. I am sure they will always harmonize their differences. There never will be a time—and we have substituted majority for unanimous vote—you never will find the time when the joint board will not reach some agreement in the best interests of the traveling public of their respective States.

Mr. HOCH. Does the language provide for a decision by the majority, in the gentleman's amendment?

Mr. HASTINGS. A decision by a majority vote is provided in another subsection, so the final decision will be by majority vote, and this amendment does not change that.

Remember always that these several State commissions are appointed with due regard for their competency and because of their peculiar knowledge of conditions within their respective States. They are already trained. Any member who votes against this amendment votes in favor of centralizing additional authority in Washington and votes in favor of permitting examiners and subordinate employees of the Interstate Commerce Commission to pass upon these matters, because after all that is what it means, as the members of that commission will not have time to pass upon the thousands of details referred to it, instead of submitting these same questions to representatives of the several State commissions brought together on joint boards.

I yield to no man in the House in my advocacy of State rights or local self-government. This amendment brings the government back to the people. These joint boards will respond sympathetically to public sentiment. The Interstate Commerce Commission, acting through examiners and subordinate employees, is too far removed from local public sentiment to appreciate the importance of expedition or to view important local questions from the local viewpoint. Without this amendment this bill concentrates too much power in the Interstate Commerce Commission.

My State particularly is opposed to long-distance government. We have been guided by rules and regulations of the Bureau of Indian Affairs, first in the War Department and now in the Interior Department, for 100 years. It has been the cause of many interminable delays and a great deal of just criticism.

After all, no board or commission, sitting as far away as the seat of our National Government, can be expected to respond to local sentiment as the representatives of commissions or joint boards.

Some few years ago the city of Okmulgee, Okla., was anxious to induce the Missouri, Kansas & Texas Railway to enter that city. This railroad secured an option on a short line of railroad entering Okmulgee and running south some 10 or 12 miles into the coal fields.

An application was made for a certificate of convenience and necessity, and it was referred to the State Corporation Commission of Oklahoma for investigation and report. This report was favorable, but it was reviewed by an examiner for the Interstate Commerce Commission and an adverse report made. In the meantime a train load of anxious representatives from Okmulgee came to Washington at great expense and aided their Representatives in both branches of Congress and the attorneys representing the city, and all interested appeared before the commission to urge early and favorable consideration. No action was taken by the commission until the option of the Missouri, Kansas & Texas Railway for the purchase of the short line had expired. Therefore the line was never built, and the splendid city of Okmulgee lost the competitive service which this railroad would have brought, and I feel sure that it would have added greatly to the upbuilding of the city and the community which it was to serve.

Let us not forget that the roads which are traversed by these motor busses are largely built by local and State taxes. It is true that the Federal Government contributes some Federal aid, but that amount is small compared to the very great amount expended from local and State funds. Here we have these highways constructed largely by local and State taxes, and yet by the terms of this bill the States and the local communities will have no control over the granting of applications for the use of such highways in so far as interstate transportation is concerned.

Let us not be deceived by the terms of this bill. I invite attention to the last three lines, which the amendment I offer would eliminate, referring to decisions of joint boards, which reads as follows:

And which shall be subject to review by the commission in the same manner as provided in the case of members or examiners under this section.

The amendment which I offer provides for the orders of these boards to be effective without review upon their being filed with the commission. Without this amendment this bill subjects every order of any joint board to review by the commission.

You have all read the decisions which emasculated State commissions so far as the railroads are concerned. They have little and practically no final authority. This bill is an entering wedge to emasculate these commissions of their authority over interstate bus transportation. Once enacted it is difficult to amend or repeal such a bill. These highways upon which the local communities and the States have expended millions of dollars will be appropriated for interstate bus transportation without the consent of the local communities and the States, and they will have little control over them. These commissions now have exclusive authority and control over and pass on similar questions with reference to bus transportation exclusively within the respective States. No reason sound in principle occurs to me why joint boards composed of the respective representatives should not be given the same final authority and control over the use of the roads in interstate bus transportation.

I have tried to show how the members of the respective commissions when they meet would divide up into joint boards to pass upon all questions which may be referred to them, and as to the expense, and I do not believe, in the first place, that the assembling of these boards would occasion any additional expense over and above the expense of the investigations that would have to be carried on under the general supervision of the Interstate Commerce Commission, and the question of the additional expense, if any, would be overcome greatly by the expeditious action of the joint boards and their sympathetic consideration in the decisions as to the many questions submitted for their consideration.

There are 11 members of the Interstate Commerce Commission, and I doubt if there will ever be assembled as many members on any joint board. You can not, of course, have the judgment of the Interstate Commerce Commission unless that commission meets and passes upon the questions submitted. If you take into consideration the amount of the salaries of the members of the commission, and the fact that no additional salary will be paid to the members of the joint boards, but only the amount of their expenses, in my judgment, it would be more economical for joint boards to pass upon the many questions referred to them than for these same questions to be referred to the Interstate Commerce Commission. If an erroneous decision is reached by the joint boards, the people of the respective States will have an opportunity to secure a change of the policy of any joint board through a change in the respective commissions.

The motor-bus industry is an expanding one. The day is not far distant when every railroad will supplement its service with motor-bus service, and this makes it the more important that

the authority over this character of transportation be retained in joint boards representing the commissions of the several States.

Finally, let us remember that we are only submitting to the joint boards the questions with which the several State commissions are familiar, and which they are deciding day after day throughout each State in the Union.

Let me repeat, if a commission is competent, experienced, and trained to pass upon these same questions within a State, surely representatives of the commission can be trusted to carry that same experience with them in their action upon the joint boards.

This amendment is in the interest of expeditious action, would relieve the Interstate Commerce Commission of thousands of details with which it should not be burdened, would utilize the experience of trained men on the separate State commissions, prevent additional concentration of authority in Washington, and leave to representatives of the States the full and complete control not only of motor-bus transportation within the States but over roads which the local communities and the States have taxed themselves millions of dollars to construct.

Mr. NELSON of Maine. Does the gentleman recognize any difference in the case he cites and the case where the interests are conflicting, where the interest of the intrastate may conflict with the interest of the interstate commerce?

Mr. HASTINGS. There is no difference in principle. If the Congress by an act under the authority of this same clause of the Constitution can refer the approval of deeds to the judges of the county court and constitute them Federal agents to pass upon such conveyances, then the Congress of the United States by this legislation can constitute representatives of the State commissions Federal agents, and clothe them with the power and authority to finally pass on the question submitted to them.

Mr. NELSON of Maine. There is no question in anybody's mind, I think, about the power of Congress to appoint a State agent or a State court a Federal administrative agent, but does the gentleman agree with me that the intention of the Constitution was that interstate matters should be decided by Federal authority?

Mr. HASTINGS. Happily both are authorized by the same clause of the Constitution which I read when I first presented the question. It is under the power to regulate commerce with foreign nations and among the several States and with the Indian tribes that this power is exercised. It is under the same clause of the Constitution.

Mr. NELSON of Maine. Does the gentleman recognize any worth in the claim that matters relative to interstate commerce should be removed from the decision of those who are directly interested in them?

Mr. HASTINGS. I am now discussing the power of Congress to enact such legislation. So long as Congress has the power to regulate commerce between the States, I think the Congress has the power to constitute any body or representatives as Federal agents, just as it constitutes the Interstate Commerce Commission itself a Federal agent, with final power to pass on matters referred to it.

Mr. NELSON of Maine. I agree with the gentleman on that. I now ask him if he recognizes any merit in the claim that interstate commerce matters should be determined by those not directly interested in them.

Mr. HASTINGS. I am going to discuss that matter in a moment.

Mr. GARBER of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS. Yes.

Mr. GARBER of Oklahoma. I have a great deal of respect for the good judgment of the gentleman from Oklahoma and for his recognized legal standing. I do not believe there is any question but that the power could be delegated to the personnel referred to who would be authorized to act as Federal agents, with but one or two exceptions; and those are, if the State law did not prohibit and the individual did not refuse to act. With those two exceptions the gentleman is well supported by the authorities. Here, however, is an economic proposition which results from the gentleman's scheme of regulation. Here we have two States that have passed upon a 2-State operation. They have finally determined all the matters that have been submitted to them; the question as to rates, the question as to bonds, and various other matters. Over here we have two other States, over here in some other section we have three other States, and over here five other States, and as a result of the gentleman's scheme would we not have a lot of little jurisdictions, separate and distinct, all over the United States, and uniformity would not exist and could not be obtained by reason of the final jurisdiction given to these Federal agents.

Mr. HASTINGS. I prefer to submit such matters to local boards or commissions always than to centralize the authority in Washington.

Mr. McSWAIN. Then, Mr. Chairman, if the gentleman will permit, responding to the inquiry of the gentleman from Maine [Mr. NELSON], with the suggestion from him that the exercise of the rights of interstate commerce should be controlled exclusively by some Federal agent, I call his attention to the fact there have been more cases in the State courts dealing with the interstate commerce clause of the Constitution than in the Federal courts, and that the Constitution itself by the clause that makes the judges of the Federal States bound by the provisions of the Federal Constitution, imposes upon the State judges, wherever that question as to the control and exercise of interstate commerce arises, the duty of passing on that Federal question, and but for the judicial act itself, the decision of the high State court would be final on that Federal question.

Mr. HASTINGS. I thank the gentleman for his contribution.

Mr. NELSON of Maine. But how does that affect this case?

Mr. HASTINGS. The motor-bus industry has expanded so greatly within the last five years that there are motor busses in operation transporting passengers on every State and Federal highway in the United States. They are not only a great necessity but a great convenience. Through expansions and mergers the number engaged in interstate motor-bus transportation may be decreased but the service, through large unified companies, will be enormously expanded. The necessity for regulation is obvious, to insure a continuity of service, to regulate hours of labor, to provide for insurance to indemnify losses through accident, and this regulation is recognized as being necessary by those engaged in interstate bus transportation throughout the country, but if the Members vote to lodge this authority in the Interstate Commerce Commission, to be exercised through examiners and subordinate employees, I warn them that there will be many bitter experiences and complaints of delay which we could avoid by the adoption of the amendment I propose giving final authority to joint boards composed of representatives of the commissions of the several States, elected by the people themselves.

Mr. RAYBURN. Mr. Chairman, will the gentleman yield right there?

Mr. HASTINGS. I yield to the gentleman from Texas.

Mr. RAYBURN. They may stay at one place for a year. But suppose they went to 180 places?

Mr. HASTINGS. That would be an extreme case and highly improbable. These matters would be referred to the joint boards in large numbers, and they would be considered and decided at one sitting.

In conclusion, let me warn the Members of the House that unless the amendment which I have offered is adopted, practically every motor-bus transportation company in the country will in some way soon be connected up, owned by or allied with motor-bus transportation companies doing such an interstate business as will bring them within the shelter and protection of the provisions of this law, so as to get away from local or State regulation.

No one ever dreamed when the railroad bill was enacted that the courts would go so far in sustaining the jurisdiction of the Interstate Commerce Commission over purely intrastate roads when they were connected in any way with interstate systems.

The same thing will happen in the bus-transportation industry. The railroads will supplement their systems with motor-bus transportation, and immediately thereafter mergers will follow and the motor-bus transportation companies will be enlarged and expanded, and the Interstate Commerce Commission will have final authority over the entire subject, as they do now, in effect, over the question of railroad transportation.

Mr. NELSON of Maine. Mr. Chairman, will the gentleman yield for just one question?

Mr. HASTINGS. Yes.

Mr. NELSON of Maine. I understand you admit that this is an attempt on the part of the States to acquire control over interstate commerce?

Mr. HASTINGS. I do not make such a contention. I mean to say that by the language of this amendment the representatives of the various States are constituted Federal agents to pass upon the questions as provided in the amendment involving the use of their roads, which the States themselves have built very largely with their own money. I am asking you Members who believe in local self-government, as I conclude these remarks, which do you prefer? Do you prefer to leave these questions with the representatives of your own commissions, representing your own States, acting as Federal agents, or would you leave them to examiners or subordinate employees

of the Interstate Commerce Commission? The Interstate Commerce Commission recommends in effect this amendment—

Mr. MAPES. Mr. Chairman, will the gentleman yield right there?

Mr. HASTINGS. I will be compelled to yield to the gentleman from Michigan.

Mr. MAPES. As long as the recommendations and orders of the joint board become the orders of the commission within 10 days, unless somebody appeals to the Interstate Commerce Commission, what is the use of raising all the doubts which exist in the minds of so many people as to the constitutionality of the provisions prepared by the gentleman? Those doubts are very serious in the minds of many people.

Mr. HASTINGS. It is not a serious question, in my opinion, and if you will read the decisions I have quoted I do not think it will be found to be a serious question by the gentleman.

Mr. RAYBURN. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS. Yes; I yield.

Mr. RAYBURN. The only difference is that the gentleman is speaking of the final review. Nobody thinks that the examiner or commissioner would do more than merely recommend.

Mr. HASTINGS. I prefer to trust my own State authorities. I am for local self-government as far as possible.

Mr. RAGON. Will the gentleman yield?

Mr. HASTINGS. I yield.

Mr. RAGON. I am not sure that I understand the purport of the gentleman's argument. If there is a matter that pertains to Arkansas, Oklahoma, and Kansas, for instance, under this amendment joint boards composed of those three States would pass upon it?

Mr. HASTINGS. That is correct.

Mr. RAGON. And that would be final?

Mr. HASTINGS. That would be final on all matters referred under subsection (d).

Mr. RAGON. In other words, it would leave it to Kansas and Oklahoma, if they saw fit, to tell Arkansas what it might do?

Mr. HASTINGS. When this amendment was prepared the word "unanimous" was provided in the bill and all three would have had to pass favorably upon it, but, with the amendment adopted only requiring a majority vote of the board, I would immeasurably prefer to have the local representatives of the two sister States, having interests in common and understanding the local questions, pass upon these questions finally than to have an examiner or a subordinate of the Interstate Commerce Commission and finally the Interstate Commerce Commission, 1,500 miles away—too far for the voice of your people in Arkansas and my people in Oklahoma to ever be heard—pass upon it. [Applause.]

The CHAIRMAN. The time of the gentleman has again expired.

Mr. HOCH rose.

The CHAIRMAN. The gentleman from Kansas [Mr. HOCH] is recognized for five minutes.

Mr. PARKER. Mr. Chairman, I ask unanimous consent that the gentleman from Kansas may proceed for 15 minutes.

The CHAIRMAN. The gentleman from New York asks unanimous consent that the gentleman from Kansas may proceed for 15 minutes. Is there objection?

There was no objection.

Mr. HOCH. Mr. Chairman and gentlemen of the committee, I discussed this matter of joint boards at some length the other day, and I regret the necessity of some repetition.

Let me say in the first place that I approached this whole question of joint boards in an attitude sympathetic toward the jurisdiction of the State commissions. If I may make this personal reference, I am sure the members of our committee will bear me out that during my years of service upon that committee, if there is one thing I have stood for it has been to retain as far as practicable jurisdiction with State and local bodies. But I came to the conclusion that the proposal such as that made by my friend from Oklahoma is utterly impracticable. I feel there are yet some members of the committee who have not gone into the matter sufficiently to visualize exactly what is proposed by this amendment.

The gentleman's amendment carries two propositions. First, he wants to make the decisions of these joint boards final in all cases. In the second place, he desires to make it necessary that there be joint boards in all cases, regardless of the number of States involved in the operation.

I do not wish to take more than a moment of the time of the committee with reference to the first proposition. It involves, of course, a very large constitutional question. He proposes, in effect, either to turn back to the States the power to regulate interstate commerce, which was granted in the Constitution to

the Congress, or he proposes, if I may put it in another way, and the way I trust is most favorable to his contention, to create the State boards as Federal agencies.

Mr. HASTINGS. That is exactly my position, the representatives of the State boards who will be on these joint boards as Federal agents under this law.

Mr. HOCH. He proposes to create them as Federal agents and provide that their decisions shall be final. Without taking the time to elaborate, I suggest this proposition to the gentleman as a lawyer: It has been held again and again that the regulations of rates, for instance, is a legislative matter and not a judicial matter, and that the question of rates comes before the courts only when constitutional questions are involved, such as the confiscation and due process of law provisions of the Constitution. Aside from that and similar constitutional inhibitions, the power to fix rates is solely a legislative function. We have set up an agency, the Interstate Commerce Commission, to do what? To act as our agent as an administrative body in carrying into effect our legislative function. I think that is a fundamental proposition. Now, if that be true, I suggest to the gentleman that you can not grant to anybody, whether it be State officers as Federal agents, or to anyone else, the power to fix rates except as an administrative act, and if that be true, then inevitably you must at least set up a uniform rule under which this administrative act will be carried out. I might illustrate with reference to the flexible tariff and other matters. In other words, it must be that a body which exercises the power does it under a mandate of Congress, which at least sets up a reasonably certain rule under which they shall administer the legislative function we have given.

Mr. HASTINGS. The gentleman recognizes that the Interstate Commerce Commission is not a constitutional commission. It was created, I believe, by the act of 1887. If the Interstate Commerce Commission, representing us as a Federal agent, can pass upon this, why can not Congress constitute another body as a Federal agent to pass on it?

Mr. HOCH. That is exactly the proposition I am suggesting to the gentleman. When we set up the Interstate Commerce Commission we gave them directions, under a definite administrative principle or guide, as to the way in which they should carry out the legislative function.

Mr. HASTINGS. Would not these joint boards act in the same way?

Mr. HOCH. I do not want to be discourteous, but I ask the gentleman to wait a moment. I can not make all the arguments in one or two minutes. The point I am making is that the gentleman proposes to create some State officials as Federal agents, and for this phase of the argument I care not whether they are State officials or not. But he proposes to grant to certain people the power to carry out a legislative function. I might illustrate. We have in many States, for instance, a provision in their law that in passing upon the question of the issuance of a certificate of convenience and necessity they shall not take into consideration the existence of rail transportation. I hope the gentleman will get this as a concrete illustration.

In other States they have a provision in their law that they shall take into consideration the existence of rail transportation. So you would have, in effect, State officers acting as Federal agents, seeking to apply in one case, as Federal agents, an entirely different principle from that which you would apply in another case. I do not believe, without going into other arguments, that you can constitute any body to carry out the legislative function which is ours without giving them a uniform guide. We can not have an agent in one case applying one rule, on the theory that it is the administration of a Federal policy, and another body carrying out an entirely different rule on the theory that they are administering the congressional will in the matter, and I think the court would look behind the words and to the substance in determining whether a uniform regulation of interstate commerce throughout the country was in fact being carried out. An admittedly different effect, final in character, in different parts of the country, even though under the same formal rule, would certainly violate the principle, at least, of the requirement for a uniform administrative guide.

In other words, the manner in which interstate commerce shall be regulated must be determined under Federal direction.

Mr. McSWAIN. Will the gentleman yield?

Mr. HOCH. Yes; I yield.

Mr. McSWAIN. Is not that exactly what we have in connection with our nine circuit courts of appeal, nine courts sometimes deciding the same question perhaps in nine different ways, and where the minimum for a writ of certiorari is involved they can never go to the Supreme Court of the United States?

Mr. HOCH. Certainly; and the gentleman's argument answers itself. In the case of the nine circuit courts of appeal, the appeal is to the one unifying body, the Supreme Court.

Mr. McSWAIN. But the gentleman knows that the circuit courts of appeal have final jurisdiction in certain cases, and in all cases where they have final jurisdiction you may have nine different rules.

Mr. HOCH. Certainly, the gentleman does not contend that the ruling of a circuit court of appeals is the carrying out of a legislative function. I am speaking here of a definite direction in the Federal Constitution wherein it grants to Congress, and Congress alone, the power to regulate interstate commerce. But I do not want to take up any more time upon the legal argument, because that is not the principal thing I arose to discuss.

Mr. ARNOLD. Will the gentleman yield?

Mr. HOCH. I yield.

Mr. ARNOLD. Suppose a State should refuse to cooperate in the organization of these boards for carrying into effect the operation of the machinery we are creating here. In what position would we be?

Mr. HOCH. We, of course, would have no regulation at all.

Mr. HASTINGS. Will the gentleman yield?

Mr. HOCH. I yield.

Mr. HASTINGS. That question was not asked me, but does the gentleman suppose there is any commission in any State in this Union that refused to act that would stay in power for another term? Nobody believes that.

Mr. HOCH. I do not wish to impose upon the committee to discuss incidental questions. I want to get to the second proposition, and I now pass from the constitutional question involved to the question of practical administration.

So that there may be no misunderstanding about what these joint boards are to do, let me repeat what the gentleman from Texas referred to a little while ago. What is it these joint boards are to do?

Let me read from the bill:

Applications for the issuance of certificates of public convenience and necessity, the suspension, change or revocation of such certificates, applications for the approval and authorization of consolidations, mergers and acquisitions of control, complaints as to violations by common carriers by motor vehicle or the requirements established under section 2 (a) (1)—

And I shall in a moment refer back to that—

complaints as to rates, fares, and charges of common carriers by motor vehicle, and the approval of surety bonds, policies of insurance, or other securities or agreements for the protection of the public required on the issuance of a certificate.

Now, I refer back to section 2 (a) (1) to see what things are included there that shall be referred to these joint boards—complaints as to violations involved in section 2 (a) (1). What are they? I quote:

To supervise and regulate common carriers by motor vehicle, as provided in this act, and to that end the commission may establish reasonable requirements with reference to continuous and adequate service at just and reasonable rates, a uniform system of accounts and reports, qualifications and maximum hours of service of employees, safety of operation and equipment, comfort of passengers, and pick-up and delivery points whether on regular routes or within defined localities or districts.

Now, all of these vast, complex things shall be, under the gentleman's proposal, referred to the joint boards.

Now, let us see how many joint boards—

Mr. KETCHAM. Will the gentleman yield before he leaves that point?

Mr. HOCH. Yes; I yield.

Mr. KETCHAM. Are not the duties which the gentleman has just enumerated now imposed upon the utility commissions of the States with reference to their own intrastate traffic?

Mr. HOCH. Yes; in most cases they are.

Mr. KETCHAM. Then, would there not be a less violent transition if we put this extra work on them rather than to impose it upon a board, like the Interstate Commerce Commission, which has never had such duties?

Mr. HOCH. If the gentleman will wait a moment, I think I can convince him as to the impracticability of the amendment, although I may be overconfident.

A facetious reference was made in the debate day before yesterday to my ability as a mathematician, and I am not at all sensitive upon that point. My good friend from Oklahoma, Judge GARBER, referred to a statement which I had made off-hand a few days before, when I said I had not figured it out as a mathematical proposition, but that I would make the guess

that even with only five States involved you might have at least 25 separate and distinct joint boards. My friend from Oklahoma said I was drawing upon my imagination. Well, you know I have consulted several mathematicians since then and they tell me I am way too low on my 25, and if my good friend from Oklahoma will bear with me for a moment I would like to conduct a little class in mathematics for his benefit, and I will take five States—

Mr. GARBER of Oklahoma. Will the gentleman yield?

Mr. HOCH. I gladly yield to my pupil.

Mr. GARBER of Oklahoma. Before doing that I know the gentleman wants to be exact in his reference to my statement.

Mr. HOCH. Absolutely.

Mr. GARBER of Oklahoma. I simply stated that the gentleman's estimate of 25 different boards in five States was not coupled with the statement of fact that it would only require five different members, each member not being prohibited from acting on all the various boards.

Mr. HOCH. Yes; but, of course, I am not talking about the number of members, I am talking about the number of separate and distinct boards, and bear in mind that each board must be created as a separate, legal entity. It must organize, it must have its officers, it must have its stenographers, it must have its clerk, and it must make a record which is to be transmitted to the Interstate Commerce Commission.

Mr. O'CONNOR of Oklahoma. Will the gentleman yield?

Mr. HOCH. Yes.

Mr. O'CONNOR of Oklahoma. And every time there is a change of any one of the members on these boards, you have got to reorganize that board.

Mr. HOCH. Yes; I hope to get to that point in a moment. Let us take five States and see exactly what is proposed. Let us take the States of New York, Pennsylvania, New Jersey, Delaware, and Maryland, and remember that all these questions, not only with respect to the issuance of a certificate, but complaints as to poor service, as to improper hours of employment, as to safety of equipment, as to insurance, and as to all these other things, must be referred to a joint board called into being for the specific purpose of passing upon the question at issue.

Now, here is an operation between New York and Pennsylvania—Buffalo and Philadelphia. Suppose the service is in effect and there is a complaint about the service. Some one makes a complaint, and you must call into being a board for the purpose of considering that, one from Pennsylvania and one from New York. That is one.

Here is another operation between New York and New Jersey. The first board has nothing to do with this; it is a separate and distinct board.

Here is an operation between New Jersey and Pennsylvania, and that is three boards. Here is a bus operator which operates not only from New York into Pennsylvania but runs into Wilmington, Del. That is the third board. The first board has nothing to do with it. It is a distinct entity.

Here is another operator that goes from New York and through Pennsylvania and Delaware and into Maryland. That is the fifth. Here is an operator who operates from New York through New Jersey into Pennsylvania. That is the sixth. There is another operation through New Jersey into Delaware and into Maryland; that is seven. Here is a carrier operating from Maryland into Pennsylvania and into New Jersey; that is the eighth board. Here is another that operates from Delaware into Pennsylvania and New Jersey. There I have given nine boards. I want to say to the gentleman from Oklahoma if he will pursue it further he will readily get 25 boards—a conservative estimate of the number of distinct boards that might have to be created to pass on operations in the case of any five States.

Now multiply that, as the gentleman from Oklahoma proposes, and take 48 States, and we have operators certainly to-day halfway across the country, and my belief is that you can buy a ticket now clear to San Francisco.

Here is an operation involving a dozen States in the Union across the country. Some one makes a complaint about rates, about service, or any other matter, or some one wants a new certificate. You have to take the map and see the particular States the operation goes through and call into being a board for that purpose.

Mr. HASTINGS. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOCH. I ask for five minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. HASTINGS. Will the gentleman yield?

Mr. HOCH. I yield.

Mr. HASTINGS. Does not the gentleman recognize that a lot of the applications would accumulate in the Interstate Com-

merce Commission, and they would call the representatives of the board there in a group or collectively, and they would submit any number of matters, just like a court clearing a docket, taking into consideration all the matters that had accumulated up to that time?

Mr. HOCH. No; I realize nothing of the sort. In the first place, we would not want to wait for matters to accumulate. The gentleman seems to be under the impression that this is a regional matter. If we had regional boards it would be a more practical proposition. One of these boards assembled from across the country would hardly get into session and finish its work before there would be another complaint with reference to some operation, and you would have to call them back again; and if the operation entered another State you would have to create a separate board—a distinct legal entity—to make a separate record.

Some reference was made by the gentleman from Virginia, for whom I have great regard, to the number of operations at the time the Interstate Commerce Commission made its report. The report was based on figures gathered in 1926. In these four years the interstate operations of busses have gone up like mushrooms. You know what is happening, that interstate busses are being increased in size and improved in all sorts of ways in order to attract the public. There is no comparison between the amount of interstate operations that are in effect to-day and what were in effect four years ago.

Mr. O'CONNOR of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. HOCH. Yes.

Mr. O'CONNOR of Oklahoma. The gentleman came up to a very important subject and then left it. Considering this is a transcontinental route and that it crosses 12 States, suppose some one State did not nominate anybody to act, then you would not have any board or any regulation.

Mr. HASTINGS. Oh, under this law if the commissions refuse to act the governor can appoint somebody.

Mr. O'CONNOR of Oklahoma. But suppose the governor did not want to act.

Mr. McSWAIN. And suppose that the President did not appoint a member of the Supreme Court, where would we be?

Mr. HOCH. I am quite willing to assume that there will be a member, and I am also willing to assume that there will be a member traveling in every case from a State to attend these meetings, because it is provided that not only the commission members may go but that they may delegate somebody else to go.

Mr. COOPER of Ohio. Mr. Chairman, will the gentleman yield?

Mr. HOCH. I yield.

Mr. COOPER of Ohio. I am interested in trying to get some regulation of the employees engaged in interstate motor bus traffic. I understand to-night they will run a man out of Washington clear through to Pittsburgh, almost 300 miles, without a change. Suppose a man had a certificate to operate a bus from Boston to Washington, I believe he would have to go through nine States. Does not the gentleman think it would be almost impossible to get those nine States to agree on regulations in regard to the hours of service of these operators?

Mr. HOCH. I not only think it would be difficult, but I think it would be utterly impracticable to be compelled in every case such as the gentleman states to call into existence a board to pass on that particular case.

Mr. HASTINGS. Does not the gentleman believe that the Representatives of his State and mine would be more sympathetic with labor than the Interstate Commerce Commission?

The CHAIRMAN. The time of the gentleman from Kansas has again expired.

Mr. PARKER. Mr. Chairman, I move that all debate upon this amendment be now closed.

The motion was agreed to.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Oklahoma.

The question was taken; and on a division (demanded by Mr. HASTINGS) there were—ayes 17, noes 86.

So the amendment was rejected.

Mr. MAPES. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. MAPES: Page 8, line 7, after the word "certificate" insert the words "application for which is referred to a joint board."

Mr. MAPES. Mr. Chairman, that amendment was prompted by the question that the gentleman from California [Mr. LEA] submitted a few moments ago. It has been prepared by the legislative counsel, and if adopted will do away with the necessity of sending to the joint boards the questions of surety bonds

and policies of insurance, and so forth, of operators who apply for a certificate of convenience and necessity under the grandfather provision of the bill. It is supposed that certificates in those cases will be issued largely as a matter of course. They will be acted upon after answers are made to questionnaires submitted by the commission.

Mr. STAFFORD. Mr. Chairman, will the gentleman yield?

Mr. MAPES. Yes.

Mr. STAFFORD. Will the gentleman please explain the mechanism of his proposal under his amendment?

Mr. MAPES. If the gentleman will refer to page 7, line 21, he will see that certain matters relating to questionnaires submitted to operators already in operation under the grandfather clause do not have to be referred by the commission to these joint boards. It would seem unnecessary to require the reference of matters relating to surety bonds, insurance policies, and so on, arising under this grandfather provision, any more than the other questions.

Mr. STAFFORD. The gentleman is quite sure that the language of his amendment takes care of that proposition?

Mr. MAPES. I am reasonably sure. As I said, the language was prepared by the legislative counsel.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Michigan.

The amendment was agreed to.

Mr. MOORE of Virginia. Mr. Chairman, I offer the following amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. MOORE of Virginia: Page 5, lines 11, 12, 14, 18, and page 6, line 9, strike out the words "or examiner."

Mr. MOORE of Virginia. Mr. Chairman, under the act to regulate commerce applicable to carriers by rail, it is provided that there shall be 11 commissioners, that those commissioners may be divided into groups of not less than 3, and to the commission as a whole or to those various groups may be assigned the duty of rendering decisions in the cases which they undertake. There is not one solitary word in the act to regulate commerce about examiners. Of course, we all know very well that examiners are used, but they are simply agents or arms or helpers of the Interstate Commerce Commission, and the decisions are left to the commission en bloc or to not less than three members of the commission. We have in this bill an extraordinary provision that makes one commissioner—and I am not raising any objection to that—or an examiner the primary judge in a case. The examiner is not appointed by the President; he is not confirmed by the Senate. He gets into the commission through the processes of the civil service law.

Very often he is a most excellent man. Sometimes he may perhaps be as competent as a commissioner himself. But very frequently he is an inexperienced man who has not been often called on to investigate the cases that are presented to the commission. Now wherefore, then, can there be any excuse for giving him the status of a judge? The bill provides that he shall have that status, and when he makes his decision his judgment is final, unless a protest shall be made within the short period of 10 days. After that, in the absence of such a protest, all that is possible with respect to that judgment in order to modify or get rid of it is to file a review proceeding before the commission, which if entertained may not be disposed of for months or perhaps for years.

I know perfectly well that if my amendment is adopted a great deal of the work will be done by the examiners; but, in my humble opinion, it is inexcusable to attempt in this proposed act to draw the line which is drawn between the regulation of the railroads, where an examiner is vested with no such authority as this bill gives him, and to give the extent of authority that is proposed to be confided to him by the section under discussion. The only answer that can be made—and I see my valued friend from New York [Mr. PARKER], the chairman of the committee, suggesting to another member of the committee [Mr. DENISON] that I should be answered—the only answer is that you are arbitrarily doing something that has no precedent. It would be just as absurd to provide by Federal statute that not the judge alone, but the master in chancery, shall decide a case. I do not see how it can be justified.

I am anxious to have a proper measure of Federal regulation. I am willing to go along with the committee to provide that. But I am unwilling to take the step that is suggested here by doing a thing that has not been thought of heretofore; to say solemnly in an act of Congress that not the men who are the judges, who have been chosen by the President and confirmed by the Senate, shall act as judges, but that in addition, certain other men who are in a wholly different category, shall have exactly the same power.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

Mr. RAYBURN. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for one minute more.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. RAYBURN. The gentleman has just voted for an amendment giving the State boards the same authority. They are not appointed by the President or confirmed by the Senate.

Mr. MOORE of Virginia. No. But those State boards are simply cooperative bodies; they are advisory bodies. The bill authorizes the Interstate Commerce Commission to create the joint boards, and it deals with the findings of the joint boards just as it deems proper. I think my friend must recognize that there is no analogy. I am willing to do what I can, as I said a moment ago, to further the general purpose of the committee in charge of this bill, but I must hesitate to vote for a bill containing such a provision as that which my amendment seeks to eliminate. [Applause.]

Mr. DENISON. Mr. Chairman, of course, I can not answer the gentleman from Virginia [Mr. MOORE], but I can explain the reason why we have put this provision in the bill.

We are now imposing duties—heavy duties—on the Interstate Commerce Commission. Congress has from time to time passed legislation supplementary to or amendatory of the interstate commerce act, and all such work incidental to the administration of those acts has been piled upon the Interstate Commerce Commission. We authorized in the transportation act the creation of a number of divisions and the commission has assigned the duties under the various statutes to these various divisions. Every one knows that the Interstate Commerce Commission is very much overworked. The committee has given this matter very careful consideration, and we have decided that we would try out this plan to authorize the commission to refer matters arising under this act to one member of the commission or to an examiner and let him make the investigation and conduct the hearings—he has that power under the act—and let him make a recommendation in the form of an order. Now, the examiner or member appointed for that purpose occupies the same status under the bill as the joint boards. When an order is made the commission may vacate or suspend it if it chooses, and, upon complaint from anyone, of course, there will be allowed a review or a rehearing or such other action as the commission may desire to take; if a matter is decided by the commissioner or a member or a joint board, if it involves an important question, if it is controversial, and any party is not satisfied with the decision of the commission or the examiner or board, the decision will be reviewed.

Now, as I say, we have undertaken to try out this plan in this act. If it is found to work satisfactorily, I have no doubt that Congress will extend its application to other acts, the administration of which we have reposed in the Interstate Commerce Commission.

Mr. LEA of California. Mr. Chairman, will the gentleman yield there?

Mr. DENISON. Yes.

Mr. LEA of California. Is it not a fact, so far as men of experience are concerned, that this examiner will be in the same position as a member of the commission who may be inexperienced when he takes his job, but who in the course of time may become an expert?

Mr. DENISON. Yes. I think with the enactment of this law the commission will appoint examiners of high character. These examiners will occupy very much the same position and exercise pretty much the same functions as masters in chancery in courts of equity. Masters in chancery are appointed by the courts to take evidence and make a finding and recommendation to the courts.

We are following somewhat the same plan in the enactment of this law.

Mr. HASTINGS. Can the gentleman state how many examiners there are in the Interstate Commerce Commission?

Mr. MOORE of Virginia. There are dozens.

Mr. DENISON. I think there are more than that.

Mr. MOORE of Virginia. Possibly in years gone by I have had more contact with the Interstate Commerce Commission than anyone here. I have formed a high opinion of many examiners with whom I have had business, but I know that almost constantly new men are appointed to that position, and I am not willing, in dealing with this important matter, to conjecture that the commission is always going to select the most mature and experienced and capable men.

Mr. DENISON. Very often new men are appointed as members of the commission. So that argument of the gentleman from Virginia is not very sound, it seems to me.

I might say in conclusion, Mr. Chairman, and I want to say to my friend from Virginia [Mr. MOORE], that if he should talk with the members of the commission, he would find that they approve of this plan.

Mr. MOORE of Virginia. I have examined with some care the elaborate report made by the commission in 1928 after investigating this whole subject, which concludes with a great number of recommendations and suggestions. There is not one solitary word in it with reference to this proposal about examiners.

Mr. DENISON. Since then members of the commission have indicated that this plan meets with their approval. I think we can well afford to try out this plan in the administration of this act. It may furnish us a valuable experience to guide us in future legislation.

Mr. PARKER. Mr. Chairman, I move that all debate on this amendment close in five minutes.

The motion was agreed to.

The CHAIRMAN. The gentleman from South Carolina [Mr. McSWAIN] is recognized for five minutes.

Mr. McSWAIN. Mr. Chairman and Members of the House, it is not a question of who does the work. It is not, as the gentleman from Illinois says, that an examiner is in the category of State commissioners or State representatives who are called in to constitute the joint board. The members of the State commission have official responsibility, both political and official responsibility, whereas an examiner is a mere clerical functionary with no official responsibility.

Mr. HOCH. Will the gentleman yield?

Mr. McSWAIN. I yield.

Mr. HOCH. The bill does not confine it to members of State commissions; but they may designate anyone, even though they are not official at all, to represent the people.

Mr. McSWAIN. Exactly; but he is representing his State, and in that respect he does have official responsibility.

I will concede that as a matter of fact, I even suspect 90 per cent of the work will be done by the examiners, and even if the amendment of the gentleman from Virginia prevails, and if we strike out the power of the examiners to finally pass an administrative order, the commissioner will sign many orders of whose contents he will have no personal knowledge. However, that is true of the President of the United States. We have imposed upon the President 10,000 duties for which he has official responsibility. He appoints all of the hundreds of thousands of civil-service employees. He appoints the officers of the Army and the Navy. He appoints the postmasters. But, while he does not know who is named in the commission, he has official responsibility, and we can call somebody to account.

Now, here, we propose to have a mere examiner, under civil-service status, act in the solemn official position of a judge among the people of the country and the people of the States. I submit that is going too far.

Mr. BURTNESS. Will the gentleman yield?

Mr. McSWAIN. I yield.

Mr. BURTNESS. Does the gentleman concede that if the proposed amendment is adopted it would prevent an examiner from going out and holding hearings?

Mr. McSWAIN. Not at all. It would not.

Mr. BURTNESS. Then the gentleman should consider it carefully in that respect, because the language now provides that this matter, by order of the commission, may be referred for hearing to any member or examiner of the commission. Now, if the words "or examiner" are stricken out and the words "may be referred for hearing to any member of the commission" are left, it will absolutely foreclose the commission authorizing an examiner to even go out and hold hearings.

Mr. McSWAIN. No, indeed. Whatever an examiner may do under the language as it will remain, if the amendment be adopted, will be in the status of an examiner under the existing transportation act with reference to railroads. In other words, he will be acting in the name of and by the authority of and under the power of the commission itself.

Mr. BURTNESS. Where does the gentleman find language to that effect?

Mr. McSWAIN. Oh, that is the common law.

Mr. BURTNESS. The Interstate Commerce Commission law?

Mr. McSWAIN. Yes; the same as when my secretary signs my name a dozen or more different times each day.

Mr. Chairman, I think we should go slowly in this matter of transferring at one fell swoop all matters relating to the carrying of passengers over State lines to the Federal Government and to the Interstate Commerce Commission. It is a very different situation from the railroads. The railroads acquired their rights of way and built their own tracks, and the general public

has no rights upon their tracks. But the highways have existed, some of them for hundreds of years, and are the property of all the people. These highways have been improved largely at the expense of the States and local subdivisions of the States. I believe that 90 per cent of the money that has been spent in building hard-surface roads and in building substantial wide bridges has been furnished by the States or the counties or the highway districts.

Now, if we transferred all jurisdiction regulating the carrying of interstate passengers by motor vehicles to the Federal Government, we will be bringing about a very radical and far-reaching change, and one for which the people are not yet prepared. For that reason I have favored such amendments as have been offered by the gentleman from Oklahoma [Mr. HASTINGS] to give the control of these matters to representatives of the States involved, acting as Federal agents, and to make their decision and judgment final and not reviewable by the Interstate Commerce Commission. It is a very common-sense argument in support of this proposition.

If we adopt this legislation, and if some of the imaginary and theoretical objections which have been urged against it become true and are realized, and if the public demands that we remove these obstacles and objections, we can very easily amend the law. But if, on the other hand, we, by one act, transfer all jurisdiction to the Interstate Commerce Commission, we will never be able to recall it. Of course, theoretically, we have the power to repeal that law and restore it to the States, but, as a matter of fact, we know the all-absorbing, centripetal power of these Federal bureaus and commissions. We know that their history is a constant increase, expansion, and enlargement of power. In no instance has there ever been a shrinking, lessening, or reduction of power.

I propose to offer amendments to prevent the removal from State courts to the Federal courts of any suit brought in a State court against one of these interstate carriers doing business in or through a State. I predict—and the history of the railroads, express companies, telegraph companies, and telephone companies are my unimpeached witnesses to prove that my prediction will come true—that these persons, firms, and corporations now operating interstate busses will all be incorporated and operate under some charter issued by a foreign State, such as Delaware or Rhode Island. Recently, while in the capitol of Delaware, I noticed a large force of clerks working late at night in the office of the secretary of state.

Being amazed by this unusual sight, and being accustomed to seeing Government clerks in Washington grab their hats and pocketbooks at 4.29 p. m., I was prompted to ask what this unusual sight could mean. I thought maybe the clerks were making up for some time they had lost on account of fire or storm. But I was informed that at this season of the year it occurs every night. Clerks are paid overtime to stay and get out charters for corporations being incorporated under the accommodating laws of Delaware, to do business in other States. I was informed that they are grinding out scores of charters every day, and maybe hundreds.

That is sure to happen with the bus business. When the bus franchises become very valuable under the provisions of this law, and when they shall be required to take out indemnity insurance so as to protect their passengers and the public, then the question of civil liability for such damages will become very acute. To meet this situation these carriers of passengers by motor vehicle will incorporate their concerns under the convenient laws of a distant State. Then when a passenger is injured or when the vehicle injures a pedestrian on the highway, or collides with another motor vehicle, damaging its passengers, or kills the farmer's livestock, or runs over the farmer's child as the child is passing from the house to the barnyard on the other side of the highway, and when the injured person files suit in the State court, which has been the forum of the people for hundreds of years, the bus corporation will appeal in the State court with a petition and bond for the removal of that court into the Federal court. Under the existing law such removal will be mandatory, and when the case is removed to the Federal court, the Federal judge will not send it back to the State court.

When the case comes to trial in the distant Federal court, the complaining party will find himself confronted with strange rules of procedure, strange rules of evidence, a strange judge, strangers on the jury, and strange principles of law, governing the responsibility of carrier to passengers and of busses using a State road as an interstate highway. Based upon a rather varied experience and long observation, I am prepared to predict that the shrewd and powerful bus corporations, being able to employ the most expert legal talent and having abundant expense money, to conduct all the auxiliary and incidental activities of a trial, will win out in most of the cases, and injured

persons will be baffled, discouraged, and finally induced either to drop their cases or settle them for insignificant sums.

As the bus corporations become more powerful and feel themselves protected by Uncle Sam's all-powerful courts, they will become more arrogant in their conduct upon the highways. Already many of these busses are so large that they take up more than half of the paved surface, and avoid getting very near to the right edge of the pavement. Other vehicles coming in the opposite direction are endangered but must stop, or slow up, and perhaps turn out to accommodate the bus. The reason is that the bus is heavy and can not be overturned by impact with a light passenger car, and does not mind having a little paint knocked off. The individual automobilist, traveling in his light family car, and having a pride in preserving the paint, desists from a collision with the bus, even when the bus is manifestly encroaching far beyond its own side of the road.

When the rich corporations and railroad companies shall own and operate these interstate busses, then they will be heavier and larger and perhaps wider, and the citizens of the very communities and counties that have built the roads, first by their own hands and labor and later have hard surfaced them with tax money drawn from their own pockets, will be partially driven from the use of the road, and will certainly have their free use of the highways hampered.

I greatly fear that the provisions of the bill, even after being amended by the Mapes amendment, will prove very unsatisfactory to our people. I think it is a manifestation of concentration and federalization gone mad. I think that we should go more slowly. It is true that some control based upon congressional action is necessary to protect the public using or coming in contact with these interstate bus lines. Under the decision of the Supreme Court of the United States these interstate bus lines are now absolutely without any regulation whatsoever. Therefore, it is desirable that Congress should exercise its constitutional power to regulate these interstate bus lines, but it should exercise that power by creating joint boards representing the States at interest and we should proceed step by step and perhaps year after year in the conservative and reasonable improvement and amendment of this small beginning. The bill before the House is all comprehensive in its scope.

By one mighty stroke it strikes down all State control and State authority and transfers from every nook and corner of the Nation the power to regulate these interstate bus lines to the Federal Interstate Commerce Commission. This is a far-reaching act. Under the numerous and explicit decisions of the Supreme Court of the United States construing the constitutional power of Congress to regulate interstate commerce, that regulation can apply not only to the vehicle employed to carry on interstate commerce but can apply to the highway upon which that commerce passes and to every agent, instrumentality, and action connected with the general business of interstate commerce. Therefore the next step we may expect will be an amendment to this law giving the Interstate Commerce Commission the power to make rules governing the use of the road. We may expect under this power the Interstate Commerce Commission to prescribe how private passenger cars carrying the owner and his family for an airing Sunday afternoon may use a highway that the great-grandfather of this citizen helped lay out and to open up and keep in repair with his own labor 150 years ago. In like manner the grandfather and the father and this citizen have been contributing labor, material, and money from their own resources to keep this highway in condition to travel.

They have contributed 90 per cent of the money to put the hard surface on this road. Now comes the Interstate Commerce Commission, situated 3,000 miles from the neighborhood through which the road passes, and tells this citizen of the State of California or of the State of Washington how he shall be permitted to use the road. This citizen understands that he must use the road in the manner prescribed by the statutory and common law of his State, but he will resent being dictated to by a commission at Washington telling him how he shall use his own road. Every bus driver will be subject to Federal regulations and not to State regulations. Every local agent of an interstate bus carrier will be a Federal agent and not a State agent. The kind of brakes to be used, the kinds of fenders to be used, the rate of speed, and the thousands of other details will be regulated from Washington and not between States. The highways will swarm with uniform Federal inspectors and Federal patrolmen, assuming arrogant and arbitrary attitudes and moods. The State inspectors and State rural police will be shunted to the background. All the use of the road will be subordinated to the superior law of the Interstate Commerce Commission.

Furthermore than that, in a very few years there will not be a single bus line in any of the States that will be subject to the absolute authority of the States and of the State regu-

latory bodies. It is true that the bill as it will stand amended will by so many words preserve to the States the regulation of purely intrastate carriers; but in a few years there will be no purely intrastate carriers. These merely local and intrastate carriers will seek the protection and the benefits of this Federal act. In order to do this they will be taken over as subsidiaries and affiliated corporations of the big interstate lines. They themselves, these local, intrastate lines, will take out a charter under the law of a distant State. They will affect a fictitious and pretensive connection with the main interstate lines. Then they will appeal to the Supreme Court of the United States under its decisions to hold and regulate them as parts of the entire nation-wide system of interstate commerce. Under its decisions the Supreme Court will find it an easy step to have the Federal system of carriers by bus gobble up and swallow, boot and baggage, the entire motor-bus business.

Then, where will the intrastate bus line be? Then, where will the power of the States be? Then, what will be the answer of those who now insist that this bill in all of its comprehensive and sweeping terms should be enacted into law? I hope that I may prove to be a false prophet, because it seems that this Congress is determined to surrender the last vestige of State power. I should prefer to prove to be a false prophet than to witness the miserable and servile conditions that my prediction enumerates. But my prediction is based on my judgment, and my hope has no foundations save love for the principle of local self-government and of the right of the people to regulate their own domestic affairs. Therefore, Mr. Speaker, I must insist on the amendments that I offer, and must warn my friends that they are going too far with this bill. I sincerely hope that the Senate will limit the sweeping and dangerously broad provisions of this bill.

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

The question is on the amendment offered by the gentleman from Virginia [Mr. MOORE].

The question was taken; and on a division (demanded by Mr. MOORE of Virginia) there were—ayes 22, noes 79.

So the amendment was rejected.

Mr. DENISON. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from Illinois [Mr. DENISON] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. DENISON: Page 8, lines 1, 2, and 3, after the word "control," strike out "complaints as to violations by common carriers by motor vehicle of the requirements established under section 2 (a) (1)."

Mr. DENISON. Mr. Chairman, I offer this amendment for the purpose of giving the House an opportunity to vote upon the question of whether it should be compulsory in all cases to refer all of these minor complaints as to service to joint boards. That is a matter that was discussed at length by Mr. HOCH, and I do not care to repeat what he said. But in the administration of this act there are certain major questions, such as whether a certificate of convenience and necessity should be issued to the carrier who applies for it, or whether a certificate once issued should, under circumstances arising, be canceled, or some change made in the certificate; also questions of rates, fares, and charges, and other questions enumerated in section 8, that have to be referred to the joint board; questions of consolidations, mergers, and acquisitions of control. Those are all major questions, as I would designate them, that perhaps should be referred to the joint boards, if we are going to have them. But there are a great many minor or unimportant questions—

Mr. MOORE of Virginia. Will the gentleman yield?

Mr. DENISON. I yield.

Mr. MOORE of Virginia. I did not understand the language of the amendment offered by the gentleman, and I ask him to enumerate the matters which the board is not allowed to refer to.

Mr. DENISON. I was about to do that. The amendment simply has the effect of not requiring the commission to refer to the joint boards one of the classes of things which are enumerated in section 8, namely, complaints about violations by common carriers by motor vehicle of the requirements established under section 2 (a) (1). If you will turn to that section, it reads:

(a) It shall be the duty of the commission—

(1) To supervise and regulate common carriers by motor vehicle as provided in this act, and to that end the commission may establish reasonable requirements with respect to continuous and adequate service at just and reasonable rates, a uniform system of accounts and reports, qualifications and maximum hours of service of em-

ployees, safety of operation and equipment, comfort of passengers, and pick-up and delivery points whether on regular routes or within defined localities or districts.

When any one of those questions arise in the case of a motor operator who operates between two or three States, the commission has no discretion. It can not settle the controversy itself. It can not decide it. If it should attempt to do so it would be acting ultra vires. It must create a board to settle it. [Applause.]

Mr. HOCH. Will the gentleman yield?

Mr. DENISON. I yield.

Mr. HOCH. Would it leave it optional with the commission to refer these matters to which the gentleman has referred in any case? Suppose, for instance, only two States were involved, would it still be possible for them to refer it in that case, or does the amendment make it impossible in any case to refer it?

Mr. DENISON. I think these minor matters might be disposed of by the commission instead of creating a joint board.

Mr. HASTINGS. Certainly you make it impossible, because you eliminate subsection (d).

Mr. HOCH. As I understand it, it says "the commission shall refer the following matter," and the gentleman's amendment is to strike out one of those matters. The question I raise is would it still be optional to refer such matters to the joint board?

Mr. DENISON. They could do it, but they do not have to.

Mr. MAPES. As I understand it, the amendment offered by the gentleman would take away from the jurisdiction of the joint boards all matters referred to on page 4, section 2, paragraph 1.

Mr. DENISON. Yes; it would take away compulsory jurisdiction.

Mr. MAPES. It would, in effect, take away from the joint boards all matters arising out of the operation of the busses.

Mr. DENISON. No; the gentleman misreads it. Section 2 (a) provides that:

It shall be the duty of the commission (1) to supervise and regulate common carriers by motor vehicle as provided in this act, and to that end the commission may establish reasonable requirements with respect to continuous and adequate service at just and reasonable rates—

And so forth. Now, I am striking out the requirement that it must refer to the joint boards complaints as to those things, and the only change is in the compulsory part of the bill. In other words, if my amendment is adopted, as I understand, the commission is not required to refer all those complaints to the joint boards.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. DENISON. Mr. Chairman, I ask unanimous consent to proceed for two additional minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to proceed for two additional minutes. Is there objection?

There was no objection.

Mr. DENISON. Suppose there is a motor carrier operating between three States and some passenger makes a complaint about the comfort of a car? Are we going to pass legislation which will prevent the commission from deciding that complaint itself and correcting it? Are we going to pass legislation that will require the commission to create a joint board to consider the question of the comfort of a coach?

Mr. BURTNESS. Will the gentleman yield?

Mr. DENISON. Yes.

Mr. BURTNESS. I am thoroughly in sympathy with the gentleman's general proposition. I think there are a number of those minor things which should be eliminated from consideration by joint boards, but I am seriously concerned with the question as to whether or not section 2 (a) (1) does not include much more than minor matters. For instance, the one the gentleman referred to first relative to the requirement with respect to continuous and adequate service at just and reasonable rates. That is not a minor thing; that is a major thing. The next two or three are rather minor. Then we come to the last one:

And pick up at delivery points whether on regular routes or within defined localities or districts.

The gentleman, I think, will recall the discussion in the committee to the effect that that was one of the features which belonged particularly to the joint boards and was one of the questions which they should particularly consider. I would be inclined to vote with the gentleman if he is absolutely certain that his amendment would still leave it discretionary with the commission to refer such matters to the joint boards, but I am

not quite clear as to whether the gentleman is right without being able to refer us to other provisions of the bill.

Mr. DENISON. That was my thought. Mr. Chairman, may I ask the chairman of the committee if we must settle this matter to-night?

Mr. PARKER. Yes; I want to finish this section to-night.

Mr. DENISON. I am anxious to perfect this bill, but, since we have enlarged the joint board requirement, I do not think we should require these minor matters to be referred to the joint boards.

The CHAIRMAN. The time of the gentleman from Illinois has again expired.

Mr. STAFFORD. Mr. Chairman, I rise in opposition to the amendment. This amendment goes to the very vitals of the Mapes amendment. I am not surprised that the author of this amendment has proposed it, as he is an opponent of the policy to delegate authority to joint boards; but the gentleman from Michigan [Mr. MAPES] and the gentleman from North Dakota [Mr. BURTNESS], who favor extending joint boards to questions arising between three States, are not in favor of this amendment.

What does it do? It takes away from the joint boards those matters which are better controlled and supervised by the joint State boards.

Do you mean to tell me that an examiner, a bureaucrat, as I designated him the other day, in Washington is better able to determine the character of the service in the West, the far West, the Northeast, or any other district of the country, than the representatives of the utility commissions acting in concert on a joint board? Are we in Wisconsin and Minnesota to have an examiner determine our rates or the reasonable character of the rates based upon the amount of traffic? Are we to leave it to an examiner to say what the character of the service shall be and how frequent it should be?

The purpose of this committee in adopting the Mapes amendment the other day so overwhelmingly was to leave it to these joint boards, composed of one man from each of the utility commissions of the respective States concerned, and yet you are now proposing to tear out the very vitals of local regulation.

The amendment should be defeated, so that we may continue with a policy in harmony with the Mapes amendment. [Applause.]

Mr. DENISON. Mr. Chairman, I desire to ask the chairman of the committee if he will permit me, after further consideration of the matter, to go back to this section to-morrow and offer a modified amendment? It may be that my amendment accomplishes more than I intended it to accomplish. After having a conference with the legislative counsel, I would like to have the privilege of perhaps going back to it and offering an amendment in a modified form. In the meantime, I will withdraw the amendment by unanimous consent, if I can get it.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that the amendment, which he has offered and which is now pending may be withdrawn. Is there objection?

There was no objection.

Mr. PARKER. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. MICHENER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee, having had under consideration the bill (H. R. 10288) to regulate the transportation of persons in interstate and foreign commerce by motor carriers operating on the public highways, had come to no resolution thereon.

INLAND WATERWAYS AND THE 9-FOOT CHANNEL ON THE UPPER MISSISSIPPI

Mr. SNELL. Mr. Speaker, I ask unanimous consent that the gentleman from Minnesota [Mr. NOLAN] may be permitted to address the House for two minutes.

The SPEAKER. The gentleman from New York asks unanimous consent that the gentleman from Minnesota [Mr. NOLAN] may address the House for two minutes. Is there objection?

There was no objection.

Mr. NOLAN. A great constructive program is before this Government in the development of our inland waterways systems along modern lines so that they may be effective and economical commercial highways.

Part of the program is completed, the next most important step is the immediate authorization of a 9-foot channel on the upper Mississippi.

The development of our inland waterways has been the subject of much discussion in and out of Congress. Out of these discussions has come the mass of facts and figures which has molded public opinion for the immediate development of a com-

prehensive and unified system of internal waterways. President Hoover sensed this aroused public interest when he said in his Louisville speech:

The American people, I believe, are convinced. What they desire is action, not argument.

Nor is a definite and comprehensive plan lacking. Grounded upon engineering knowledge, the Mississippi Valley Association, representing the great Mississippi Valley, joins with President Hoover in the accomplishment of a program which calls for the creation of navigable channels of at least 9-foot depth and of suitable widths in the Missouri, the upper Mississippi, the Illinois, the Tennessee and Cumberland, the Coosa, Alabama, the Chattahoochee, and probably the Arkansas and Red Rivers, wherever there is sufficient water to support 9-foot navigation; and the development of the intracoastal canal from Corpus Christi to the Appalachicola and the trans-Florida canal to a connection with the Atlantic coast deep waterways system. With the lower Mississippi and the Ohio already in use, this comprises a system of standard connected waterways 7,000 miles long, commercially navigable throughout its length.

To carry forward all these great works is not a dream of the visionaries—

Says President Hoover—
It is the march of the Nation.

What does the completion of such a program mean to our Nation, and why is it a matter of national concern? At the outset it should be stated that our navigable streams are national highways, open to the public as free arteries of commerce. No one but the National Government may improve them and no one, not even the Nation itself, may ever charge a toll for their use. They require, throughout the greater part of their length, improvement in order to make them commercially navigable. They are generally subject to marked fluctuation in depth, which requires regulation. In some instances the water supply must be conserved. In others the problem is one of guarding against the destructive effect of floods. Effective work of regulation costs money which the Nation must spend.

A system of internal waterways, such as above outlined, when completed will traverse 22 States and, in connection with and as a part of the internal transportation system of our country including railroads and highways, will move commerce between all parts of the United States and traffic with the world at large.

We assert that the development of our inland waterways system is of national benefit as a belated part of a program begun with the construction of the Panama Canal, calculated to greatly cheapen the cost of transportation between the States and with foreign nations. The completion of the Panama Canal at a cost of \$350,000,000 brought the cities of both the Atlantic and Pacific coasts and their adjacent territory into contact with one another at costs never before accomplished by other means. This partially completed program has not given to the central part of the country the same benefit of cheap transportation but on the contrary has operated to its disadvantage in competition with the more favorably located sections. The farther we are removed from the sea coast, the greater our handicap in this respect. This landlocked section must have cheap water transportation and through this access to the markets of the world if its agriculture and industry is to have a fair chance to develop and prosper equally with similar activities in this and other nations. Now, by the completion of this inland waterways system we bring the cities of the Ohio, Mississippi, Illinois, and Missouri Valleys again in close contact by water with New York, San Francisco, Seattle, and the markets of the world. What was commenced by President Roosevelt remains for President Hoover and this Congress to complete.

Thus we bring the entire Nation and all of its States in close communion with each other to the mutual benefit of all. The money spent in the development of the Panama Canal was contributed by all of the States and the interior has never wavered in its adherence to this program of cheapened transportation thus begun. What it now asks is the early completion of this entire system supplementing the Panama Canal with a completed system of modernized inland waterways so that the Nation as a whole will be benefited.

The annual national budget is about \$4,000,000,000. Approximately 75 per cent is allotted to what is now termed "preparedness"; that is, the Army, Navy, Veterans' Bureau, and pensions. I do not question the wisdom of these expenditures. An adequate Army and Navy is essential, and the debt we owe to the men who served their country in time of need is a sacred obligation. Necessary as these expenditures are, they do not repre-

sent what might be called a permanent investment. Future budgets must meet these fixed expenditures and probably increased amounts for this purpose.

Unlike our expenditures for preparedness, the Nation's investments in the improvement of our waterways are a permanent asset. It is a capital investment. Witness the Panama Canal with its tonnages increasing to such an extent that we are told that before the new canal can be built across Nicaragua the waterway at Panama will have reached or exceeded its carrying capacity. Likewise, a system of rivers and lakes once permanently improved is available for transportation for an indefinite period. Time has not yet run sufficiently to measure the durable value of such improvements in the United States. We know that many of the rivers and canals of Europe have been in beneficial use for over a century.

The financial position of the country would seem to justify this program now. As I have stated, the average annual budget is roundly \$4,000,000,000. Assuming a maximum cost of five hundred million for the completed program, this would require for the next five years an annual budget expenditure of not to exceed 2½ per cent. Then the country would own 7,000 miles of the most modern river highways in existence, and they would be there adding to the public wealth and convenience for a hundred years or more.

We submit that the prosperity of the Mississippi Valley, the greatest producing area in the world, is a matter of national concern. It is the broadening of the outlets of this region, so hampered by distances, that we have in mind. Most cursory examination of the location of world areas given over to the production of surplus food products amply demonstrates an urge for such outlets. The average distances from tidewater of the great wheat lands of Argentina is less than 200 miles. This is true of India; of southern Russia; the distance is even less in Australia; and Russia at least is served throughout this area by the cheapest form of water transportation. The average distance of the great surplus-producing area of the Mississippi Valley by rail either to the Atlantic or the Gulf coasts of the United States is at least 1,000 miles.

One of the important factors in our present farm problem is the excessive transportation costs in reaching the seacoast with farm products. Whatever present measures of farm relief may accomplish, unless they are augmented by some cheapening of the transportation costs of farm products to tidewater, they can never accomplish that relief which this Congress as well as previous ones has been striving to provide.

These convictions which we express are forcibly corroborated by the recent findings of the special board of United States Engineers, recently appointed to survey the upper Mississippi River. In their report just submitted to this session of Congress, in House Document No. 290, this board declared:

The situation in the upper Mississippi Valley is peculiar. This great inland domain, as large as the European nations of Germany, France, Italy, and Great Britain combined, is distinctly agricultural.

The postwar increase in rail rates has forced this area, which annually produces over a billion bushels of grain and exports nearly 100,000,000 bushels, to do its marketing almost entirely through one market.

The construction of the Panama Canal reduced the cost of transportation from coast to coast. The intercoast water rate now is less than the rate by rail from the central United States to any seaport. This virtual increase of the distance from the farm to seaports is further aggravated by the recent rapid increase in rail rates. Should the Mississippi be developed to the proportions of a trunk stream throughout, it would tend to equalize the competition between our inland States and the agricultural regions of other countries more advantageously located near the oceans.

One of the most essential uncompleted sections of this national system of inland waterways is the Mississippi River from the mouth of the Illinois River to the head of navigation at Minneapolis. In the early days commerce of the upper Mississippi Valley was carried on the river, and for a generation the logs of the northern forests rafted down this stream built the cities of the plains. With the advent of the railroad, however, the trend of commerce was gradually diverted from North and South to East and West, and the Civil War almost completely severed commercial relations between the North and the South. This was at the time when we were entering upon an intensive program of railroad construction and is one of the principal reasons why our trunk rail lines were built east and west and the trend of commerce, as I have said, was turned to the East. While several subsequent efforts were made to revive river transportation on this river, no real effort was made to improve the channel, or modernize river terminals and the railroads refused to make joint rates, all of which the Seventieth Congress

declared to be fundamentals of successful river transportation. There was money to be made by private capital in improving railroad transportation. No one but the Government was permitted to improve the means of transportation on the Mississippi River. Therefore, river transportation died in the intensive struggle with the newer commercial enterprise of railroad transportation. While the railroads are essential to our welfare, and always will be, conditions over which they have no control have made it necessary to increase their rates to a level where it is no longer possible for this area, so remote from the sea, to successfully market its products by railroad means alone in competition with the more favorably located areas of this and other countries.

What is the need of an authorization for a 9-foot channel in the upper Mississippi River by this Congress? There is no more forceful way of presenting this case than to repeat the language of the Special Board of Engineers, appointed to study and report upon the development of this particular division of the trunk line inland waterway system in their report, House Document No. 290. They say:

Modern towing methods were being evolved on the Ohio, but the change of project which brought a favorable improvement of that river has failed to appear on the upper Mississippi. The present 6-foot project and the methods of prosecuting it were designed to aid types of river trade which have become obsolete; the project is certainly inadequate for present needs. The people of the upper Mississippi valley desire the improvement of the river to the dimensions of a trunk-line stream so that cargoes loaded at Minneapolis, St. Paul, or other river points may proceed to New Orleans or other points on the lower Mississippi or Ohio without breaking bulk; and similarly that upstream traffic may not be hampered by the transfer from the large lower-river barges to the smaller barges used above at an intermediate terminal which is at present necessary. In fact, they are looking for a new trunk-line route to the Gulf and to Central, Eastern, and Southern United States, not only to relieve a difficult local situation, but as a matter of national benefit. An intermittent line useful to cities immediately adjacent to the river for short hauls only, as allowed by the present project, is of but minor benefit.

Perhaps the most far-reaching result of the service north of St. Louis has been to convince operators and users of the certainty of success which would accompany extension of a modern river service to the upper Mississippi River improved to proportions accommodating economical trade.

It is the opinion of the board that the present channel is not adequate to build up a commerce which will justify the necessary expenditures upon it for completion and maintenance.

Equally illuminating are the following excerpts from the report which are predicated largely upon the board's experience with the development of the Ohio River:

Just 21 years ago the same question which is now before this board for recommendation for the upper Mississippi River was before an Ohio River board. At the time the Ohio River 9-foot survey was ordered by Congress (1905) a number of locks and dams were already under construction, with a view to securing a channel 6 feet deep at low water. Pending the final report of the board, presumably from advance information received from its partial studies, Congress authorized a change from a 6 to a 9 foot project. In its report of 1908 the Ohio River board found the cost of long-haul transportation on 5½-foot draft to be 50 per cent greater than on an 8½-foot draft.

All together, from its own studies and those of the towboat board, of which two members of this board are also members, this board is convinced that a real improvement of the upper Mississippi must provide for channel dimensions which will correspond in all respects to Ohio River or better standards.

At this point I want to state that I represent a congressional district which embraces a large metropolitan area. It is not directly agricultural, but its interest, like that of every similar community, is closely linked with and dependent upon the prosperity of the surrounding country, which is primarily agricultural. In this, my district, the same as every other like district, it is clear that when agriculture languishes, trade and industry inevitably feel the depressing effects.

The need for this authorization now is essential to carry forward President Hoover's policy and program so admirably stated at Louisville last October. He said:

We should complete the entire Mississippi system within the next five years.

The upper Mississippi is an essential part of that system. To carry forward his program and give effect to his policy, this Congress should authorize this project at this session.

It is not inappropriate to here restate the pertinent portions of the platforms of the two great national parties. At the last

Republican convention, at Kansas City, the Republican Party declared:

The Republican administration during the last four years initiated the systematic development of the Mississippi system of inland transportation laws; it proposes to carry on this modernization of transportation to speedy completion.

Shortly thereafter at Houston our Democratic friends wrote into their platform this declaration:

We favor the fostering and building up of water transportation through improvement of inland waterways and removal of discrimination against water transportation.

These declarations were supplemental and complementary to the measured declarations of both parties in favor of agriculture. Now we come to the fulfillment of the hopes of the people of our section from these public pledges. President Hoover has declared these improvements to be a fundamental domestic policy of his administration; the United States Army Engineers outlined clearly what must be done; it remains for this Congress to set the plan in motion.

The city of Minneapolis, which I have the honor to represent, will be immeasurably benefited by the improvement. Not only Minneapolis but St. Paul and every other city on the upper river will find that when this project has been authorized and we know definitely that the upper Mississippi will be improved in keeping with the lower Mississippi and the Ohio there will be an encouragement to new industries and a stimulation of established industries that will bring prosperities to a section that for so long has been struggling against adverse condition and unfair discrimination in transportation costs.

I have tried to show, however, that this development is of more than local interest, that the Nation as a whole will be benefited as well as the territory directly affected.

The engineers have shown that the present 6-foot project is inadequate and valueless so far as continuous river traffic is concerned. It is like building a railroad part standard gage and part narrow gage.

I have also endeavored to prove that this improvement means genuine farm relief in giving to the agricultural producers of the Middle West the benefit of cheap transportation.

The report of the special engineers, though not complete, is still comprehensive enough and furnishes sufficient data to warrant immediate action on this project. [Applause.]

SENATE ENROLLED JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled joint resolutions of the Senate of the following titles:

S. J. Res. 69. Joint resolution authorizing the Secretary of War to receive, for instruction at the United States Military Academy at West Point, Edmundo Valdez Murillo, a citizen of Ecuador;

S. J. Res. 72. Joint resolution authorizing the Secretary of War to receive, for instruction at the United States Military Academy at West Point, two citizens of Honduras, namely, Vicente Mejia and Antonio Inestroza;

S. J. Res. 100. Joint resolution authorizing the Secretary of War to receive, for instruction at the United States Military Academy at West Point, of Godofredo Arrieta A., jr., a citizen of Salvador; and

S. J. Res. 107. Joint resolution authorizing the Secretary of War to receive, for instruction at the United States Military Academy at West Point, Señor Guillermo Gomez, a citizen of Colombia.

JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President for his approval a joint resolution of the House of the following title:

H. J. Res. 205. Joint resolution to provide for the expenses of participation by the United States in the International Fur Trade Exhibition and Congress to be held in Germany in 1930.

ADJOURNMENT

Mr. PARKER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 54 minutes p. m.) the House adjourned until to-morrow, Friday, March 21, 1930, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Friday, March 21, 1930, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON THE DISTRICT OF COLUMBIA—SUBCOMMITTEE ON
STREETS, AVENUES, AND TRAFFIC

(10.30 a. m.)

To provide for the revocation and suspension of operators' and chauffeurs' licenses and registration certificates; to require proof of ability to respond in damages for injuries caused by the operation of motor vehicles; to prescribe the form of and conditions in insurance policies covering the liability of motor-vehicle operators; to subject such policies to the approval of the commissioner of insurance; to constitute the director of traffic the agent of nonresident owners and operators of motor vehicles operated in the District of Columbia for the purpose of service of process; to provide for the report of accidents; to authorize the director of traffic to make rules for the administration of this statute; and to prescribe penalties for the violation of the provisions of this act, and for other purposes (H. R. 4015).

COMMITTEE ON MILITARY AFFAIRS

(10.30 a. m.)

To consider legislation concerning the establishment of national military parks.

COMMITTEE ON NAVAL AFFAIRS

(10.30 a. m.)

To authorize the Secretary of the Navy to proceed with the construction of certain public works at the navy yard, Philadelphia, Pa. (H. R. 10166).

COMMITTEE ON BANKING AND CURRENCY

(10.30 a. m.)

To consider branch, chain, and group banking as provided in House Resolution 141.

EXECUTIVE COMMUNICATIONS, ETC.

374. Under clause 2 of the Rule XXIV, a letter from the Secretary of War, transmitting draft of a bill to authorize the acquisition of certain land for the proper defense of the Atlantic coast, was taken from the Speaker's table and referred to the Committee on Military Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND
RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. SMITH of Idaho: Committee on Irrigation and Reclamation. H. R. 1186. A bill to amend section 5 of the act of June 27, 1906, conferring authority upon the Secretary of the Interior to fix the size of farm units on desert-land entries when included within national reclamation projects; with amendment (Rept. No. 947). Referred to the House Calendar.

Mr. COLTON: Committee on the Public Lands. H. R. 8163. A bill to facilitate the administration of the national parks by the United States Department of the Interior, and for other purposes; with amendment (Rept. No. 948). Referred to the Committee of the Whole House on the state of the Union.

Mr. SIMMS: Committee on the Public Lands. H. R. 9895. A bill to establish the Carlsbad Caverns National Park in the State of New Mexico, and for other purposes; without amendment (Rept. No. 949). Referred to the Committee of the Whole House on the state of the Union.

Mr. NOLAN: Committee on the Public Lands. H. R. 9934. A bill providing for the sale of timberland in four townships in the State of Minnesota; without amendment (Rept. No. 950). Referred to the Committee of the Whole House on the state of the Union.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on Invalid Pensions was discharged from the consideration of the bill (H. R. 1479) granting a pension to Mathilda H. Byrnes, and the same was referred to the Committee on Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CABLE: A bill (H. R. 10960) to amend the law relative to the citizenship and naturalization of married women, and for other purposes; to the Committee on Immigration and Naturalization.

By Mr. CAMPBELL of Iowa: A bill (H. R. 10961) to amend section 23 (c) (3) of the revenue act of 1928, as amended; to the Committee on Ways and Means.

By Mr. HAWLEY: A bill (H. R. 10962) authorizing the adjustment of the boundaries of the Siuslaw National Forest, in the State of Oregon, and for other purposes; to the Committee on the Public Lands.

By Mr. JENKINS: A bill (H. R. 10963) to amend an act entitled "An act making it a felony with penalty for certain aliens to enter the United States of America under certain conditions in violation of law," approved March 4, 1929; to the Committee on Immigration and Naturalization.

By Mr. McCLINTIC of Oklahoma: A bill (H. R. 10964) for the relief of soldiers who were discharged because of misrepresentation of age; to the Committee on Military Affairs.

By Mr. NOLAN: A bill (H. R. 10965) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes; to the Committee on Rivers and Harbors.

By Mr. SEIBERLING: A bill (H. R. 10966) authorizing certain direct purchasers from the importer of sugar imported into the United States from the Argentine Republic during the year 1920 to submit claims to the Court of Claims; to the Committee on Claims.

By Mr. HENRY T. RAINEY: A bill (H. R. 10967) to amend section 13 of the radio act of 1927, approved February 23, 1927; to the Committee on the Merchant Marine and Fisheries.

By Mr. SUMMERS of Washington: Joint resolution (H. J. Res. 275) for the relief of the distressed and starving people of China; to the Committee on Agriculture.

By Mr. DICKSTEIN: Concurrent resolution (H. Con. Res. 24) that the Committees on the District of Columbia of the Senate and House conduct joint hearings to investigate living conditions in the District of Columbia, and for other purposes; to the Committee on Rules.

MEMORIALS

Under clause 3 of Rule XXII, memorials were presented and referred as follows:

By Mr. FULMER: Memorial of the State Legislature of the State of South Carolina, urging the relief of those owning farms throughout the United States upon which said farms there may be mortgages to the Federal land banks; to the Committee on Banking and Currency.

By Mr. McMILLAN: Memorial of the House of Representatives of the State of South Carolina, memorializing Congress to approve of legislation looking to the relief of those owning farms mortgaged to the Federal land bank; to the Committee on Banking and Currency.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. COOPER of Ohio: A bill (H. R. 10968) granting a pension to Sarah E. Wagner; to the Committee on Invalid Pensions.

By Mr. CRADDOCK: A bill (H. R. 10969) granting a pension to William T. Jamison; to the Committee on Invalid Pensions.

By Mr. CULKIN: A bill (H. R. 10970) granting a pension to N. May Bush; to the Committee on Invalid Pensions.

By Mr. DOUGLAS of Arizona: A bill (H. R. 10971) for the relief of John McMahon, otherwise known as John James Marshall; to the Committee on Military Affairs.

By Mr. FINLEY: A bill (H. R. 10972) granting an increase of pension to Louisa Ferguson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10973) granting a pension to Sarah E. Vincent; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10974) granting an increase of pension to Cathern Swanson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10975) granting a pension to John A. Webb; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10976), granting a pension to Malinda C. Hooten; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10977) granting an increase of pension to Lucinda Edwards; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10978) granting an increase of pension to Mary J. Brittain; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10979) granting a pension to Menda Francis; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10980) granting a pension to Nancy Bailey; to the Committee on Invalid Pensions.

By Mr. GARRETT: A bill (H. R. 10981) for the relief of Hubert W. Clark; to the Committee on Military Affairs.

By Mr. IRWIN: A bill (H. R. 10982) granting an increase of pension to Elizabeth Junk; to the Committee on Invalid Pensions.

By Mrs. KAHN: A bill (H. R. 10983) for the relief of Iria T. Peck; to the Committee on Military Affairs.

Also, a bill (H. R. 10984) to authorize the appointment of John J. Dean, Medical Corps, as warrant officer, United States Army; to the Committee on Military Affairs.

By Mrs. LANGLEY: A bill (H. R. 10985) granting a pension to Donna Christina Lawlis; to the Committee on Invalid Pensions.

By Mr. McLEOD: A bill (H. R. 10986) for the relief of John Lawler Harrigan; to the Committee on Naval Affairs.

Also, a bill (H. R. 10987) granting a pension to Ella B. Fuller; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10988) granting an increase of pension to Joseph D. Beaubien; to the Committee on Pensions.

Also, a bill (H. R. 10989) granting a pension to Leon Lavigne; to the Committee on Pensions.

Also, a bill (H. R. 10990) granting a pension to Grace E. Grinstead; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10991) granting a pension to Lillian M. Bell; to the Committee on Invalid Pensions.

By Mr. MANLOVE: A bill (H. R. 10992) granting an increase of pension to Martha Curry; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10993) granting an increase of pension to Nancy Wright; to the Committee on Invalid Pensions.

By Mr. MEAD: A bill (H. R. 10994) granting a pension to Marguerite C. Traphagen; to the Committee on Invalid Pensions.

By Mr. MILLER: A bill (H. R. 10995) granting an increase of pension to Mary E. Bowen; to the Committee on Invalid Pensions.

By Mr. NOLAN: A bill (H. R. 10996) for the relief of H. C. Fisher; to the Committee on Claims.

By Mrs. OWEN: A bill (H. R. 10997) for the relief of Mrs. Adam L. Eichelberger; to the Committee on War Claims.

By Mr. PURNELL: A bill (H. R. 10998) granting an increase of pension to Amelia A. Wood; to the Committee on Invalid Pensions.

By Mr. REED of New York: A bill (H. R. 10999) granting an increase of pension to Maria C. McDonald; to the Committee on Invalid Pensions.

By Mr. SPEAKS: A bill (H. R. 11000) granting an increase of pension to Laura L. Griebel; to the Committee on Invalid Pensions.

By Mr. STRONG of Kansas: A bill (H. R. 11001) granting an increase of pension to Lou R. Dearborn; to the Committee on Invalid Pensions.

Also, a bill (H. R. 11002) granting an increase of pension to Winifred B. Hodges; to the Committee on Pensions.

By Mr. UNDERWOOD: A bill (H. R. 11003) granting an increase of pension to Sarah Funk; to the Committee on Invalid Pensions.

By Mr. VINSON of Georgia: A bill (H. R. 11004) for the relief of certain officers of the United States Navy; to the Committee on Naval Affairs.

By Mr. WOLVERTON of New Jersey: A bill (H. R. 11005) granting a pension to Rebecca Harris; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

5891. Petition of the fifth district, Woman's Christian Temperance Union, city of Minneapolis, Minn., urging Federal supervision of motion pictures, establishing higher standards before production for films that are to be licensed for interstate and foreign commerce; to the Committee on Interstate and Foreign Commerce.

5892. By Mr. ARNOLD: Resolution from the City Commission of Mount Carmel, Ill., favoring the passage of the Spanish War pension bill; to the Committee on Pensions.

5893. By Mr. BLOOM: Petition of citizens of Cincinnati, Ohio, opposing the calling of an international conference by the President of the United States, or the acceptance by him of an invitation to participate in such a conference, for the purpose of revising the present calendar, unless a proviso be attached thereto definitely guaranteeing the preservation of the continuity of the weekly cycle without the insertion of the blank days; to the Committee on Foreign Affairs.

5894. By Mr. CABLE: Petition of citizens of Allen County, Ohio, urging the passage of House bill 2562, granting an increase of pensions to Spanish-American War veterans; to the Committee on Pensions.

5895. By Mr. COOKE: Petition of 250 citizens of the city of Buffalo, N. Y., favoring the passage of the Senate bill 476 and

House bill 2562, providing for increased rates of pension for the men who served in the armed forces of the United States during the Spanish War period; to the Committee on Pensions.

5896. By Mr. CRAMTON: Petition signed by J. A. Bentalman and 131 other residents of Tuscola County, Mich., in favor of the 3-cent rate on beans as passed by the Senate in the pending tariff bill; to the Committee on Ways and Means.

5897. By Mr. CULKIN: Petition of W. A. Leslie and 133 citizens of West Eaton, N. Y., and vicinity, praying for the passage of bills giving increased pensions to veterans of the war with Spain; to the Committee on Pensions.

5898. By Mr. DAVIS: Petition of Gabriel Patterson and others, of Rutherford County, Tenn., supporting legislation for the relief of veterans of the Spanish-American War; to the Committee on Pensions.

5899. By Mr. FITZGERALD: Petition of 32 citizens of Dayton, Montgomery County, Ohio, praying for early passage of a bill to increase the pensions of veterans of the Spanish War; to the Committee on Pensions.

5900. Also, petition of 71 citizens of Dayton, Montgomery County, Ohio, praying for early consideration and passage of a bill to increase the pensions of Spanish War veterans; to the Committee on Pensions.

5901. By Mr. FITZPATRICK: Petition of the Boni Clives Club (Inc.), of Yonkers, N. Y., requesting the speedy passage of House bill 6603 providing for a short workday on Saturday for postal employees; to the Committee on the Post Office and Post Roads.

5902. By Mr. FULMER: Resolution passed by Sumter Post, No. 15, American Legion, E. C. Dunn, post commander, and J. Cliff Brown, post adjutant, Sumter, S. C., indorsing House bill 9411 proposing to establish a veterans' hospital in South Carolina; to the committee on World War Veterans' Legislation.

5903. Also, petition in favor of House bill 9411 proposing to establish a veterans' hospital in South Carolina, passed by the American Legion Auxiliary, Mrs. Henry C. Jennings, president, Bishopville, S. C.; to the Committee on World War Veterans' Legislation.

5904. By Mr. HAWLEY: Petition of the voters of Linn County, Oreg., praying for pension legislation; to the Committee on Pensions.

5905. By Mr. HOOPER: Petition of H. P. Waldo and 58 other residents of Calhoun County, Mich., asking for increase of pensions for Spanish War veterans; to the Committee on Pensions.

5906. Also, petition of C. L. Matherly and 73 other residents of Calhoun County, Mich., asking for increase of pensions for Spanish War veterans; to the Committee on Pensions.

5907. By Mr. HOWARD: Petition of the City Council of the City of Columbus, Nebr., in behalf of House Joint Resolution 167 directing the President of the United States to proclaim October 11 of each year as General Pulaski memorial day; to the Committee on the Judiciary.

5908. By Mr. LEAVITT: Petition of Thomas H. Whipple and other citizens of Valier, Mont., favoring increased rates of pension for veterans of the Spanish-American War and widows and orphans of veterans; to the Committee on Pensions.

5909. By Mr. McFADDEN: Petition of citizens of Susquehanna County, Pa., petitioning Congress to secure speedy consideration and passage of Senate bill 476 and House bill 2562; to the Committee on Pensions.

5910. By Mr. McKEOWN: Petition of Lud King and other citizens of Okemah, Okla., urging immediate consideration of House bill 2562 granting increased rates of pension to veterans of the Spanish War period; to the Committee on Pensions.

5911. By Mr. MENGES: Petition of Mystic Lodge, Knights of Pythias, of York, State of Pennsylvania, favoring the establishment of a Federal department of education; to the Committee on Education.

5912. By Mrs. OWEN: Petition of citizens of Orange County, Fla., urging the passage of House bill 2562 granting an increase of pension to Spanish-American War veterans; to the Committee on Pensions.

5913. By Mr. PATMAN: Petition of 42 citizens of Mount Pleasant and Cookville, Tex., in support of House bill 2562 and Senate bill 476 providing for increased rates of pension to Spanish-American War veterans; to the Committee on Pensions.

5914. By Mr. SHORT of Missouri: Petition of citizens of Essex, Mo., urging increased pensions for Spanish War veterans and urging speedy passage of House bill 2562 and Senate bill 476; to the Committee on Pensions.

5915. Also, petition of citizens of New Madrid, Mo., urging the passage of House bill 2562 and Senate bill 476 to increase the pension of Spanish War veterans; to the Committee on Pensions.

5916. By Mr. SHOTT of West Virginia: Petition of Robert Witten, of Anawalt, McDowell County, W. Va., asking that Congress approve increased pension rates for Spanish-American War veterans; to the Committee on Pensions.

5917. Also, petition of Huntington (W. Va.) Chapter, American Association of Engineers, relative to the purchase of the George Washington engineering headquarters as a national monument; to the Committee on Public Buildings and Grounds.

5918. By Mr. SLOAN: Petition of L. B. Wallin and 68 others, for Senate bill 476 and House bill 2562, providing for increased rates of pension to the men who served in the armed forces of the United States during the Spanish War period; to the Committee on Pensions.

5919. By Mr. STALKER: Petition of the citizens of Corning and Hornell, N. Y., urging Congress for the passage of the bill exempting dogs from vivisection in the District of Columbia or in any of the Territorial or insular possessions of the United States; to the Committee on the District of Columbia.

5920. Also, petition of the citizens of Ithaca, N. Y., and Bath, N. Y., urging Congress for the passage of bill exempting dogs from vivisection in the District of Columbia or in any of the Territorial or insular possessions of the United States as proposed by the International Conference for the Investigation of Vivisection; to the Committee on the District of Columbia.

5921. By Mr. STONE: Petition of 28 residents of Bethany, Okla., asking Congress to pass favorably on House bill 9233, to prescribe a certain prohibition oath; to the Committee on the Judiciary.

5922. Also, petition of 19 residents of Tonkawa, Okla., asking Congress to pass favorably on House bill 9233, to prescribe a certain oath; to the Committee on the Judiciary.

5923. Also, petition of 33 residents of Vici, Okla., asking Congress to pass favorably on House bill 9233, to prescribe a certain oath; to the Committee on the Judiciary.

5924. Also, petition of 21 residents of the town of Tonkawa, Okla., asking Congress to pass favorably on House bill 9233, to prescribe a certain prohibition oath; to the Committee on the Judiciary.

5925. Also, petition of 72 residents of Cherokee, Okla., asking Congress to pass favorably on House bill 9233 to prescribe a certain prohibition oath; to the Committee on the Judiciary.

5926. Also, petition of 86 residents of the town of Byron, Okla., asking Congress to pass favorably on House bill 9233 to prescribe a certain prohibition oath; to the Committee on the Judiciary.

5927. By Mr. TEMPLE: Petition of O. C. C. Pollock, R. F. D. 1, Canonsburg, and 230 others, favoring House bill 8976 for the relief of veterans of Indian wars and widows and minor orphan children of veterans; to the Committee on Pensions.

5928. By Mr. WHITLEY: Petition of citizens of Rochester, N. Y., urging passage of House bill 2562 to provide increased pensions for veterans of the Spanish-American War; to the Committee on Pensions.

5929. By Mr. WINGO: Petition of citizens of Texarkana, Ark., in behalf of Senate bill 476 and House bill 2562 to increase pensions of Spanish-American War veterans; to the Committee on Pensions.

SENATE

FRIDAY, March 21, 1930

(Legislative day of Monday, January 6, 1930)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Mr. GOFF. Mr. President, I suggest the absence of a quorum. The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Allen	Frazier	Kendrick	Shortridge
Ashurst	George	Keyes	Simmons
Barkley	Glass	La Follette	Smoot
Bingham	Glenn	McCulloch	Steak
Black	Goff	McMaster	Stelwer
Blaine	Goldsborough	McNary	Sullivan
Blease	Greene	Metcalf	Swanson
Borah	Grundy	Moses	Thomas, Idaho
Bratton	Hale	Norbeck	Thomas, Okla.
Brookhart	Harris	Norris	Townsend
Broussard	Harrison	Nye	Trammell
Capper	Hastings	Oddie	Tydings
Caraway	Hatfield	Overman	Vandenberg
Connally	Hawes	Patterson	Wagner
Copeland	Hayden	Phipps	Walcott
Couzens	Hebert	Pine	Walsh, Mass.
Cutting	Hefflin	Ransdell	Walsh, Mont.
Dale	Howell	Robinson, Ind.	Waterman
Dill	Johnson	Robison, Ky.	Watson
Fess	Jones	Schall	
Fletcher	Kean	Sheppard	

Mr. HARRISON. I desire to announce that my colleague the junior Senator from Mississippi [Mr. STEPHENS] is detained from the Senate by illness.

Mr. SHEPPARD. The junior Senator from Utah [Mr. KING] is necessarily detained from the Senate by illness. I will let this announcement stand for the day.

I also desire to announce the necessary absence of the Senator from Arkansas [Mr. ROBINSON] and the Senator from Pennsylvania [Mr. REED], who are delegates from the United States to the London Naval Conference.

I also wish to announce that the senior Senator from Tennessee [Mr. McKELLAR] and the junior Senator from Tennessee [Mr. BROCK] are both necessarily detained from the Senate on account of illness.

Mr. SCHALL. My colleague [Mr. SHIPSTEAD] is unavoidably absent. I ask that this announcement may stand for the day.

The PRESIDENT pro tempore. Eighty-three Senators having answered to their names, a quorum is present.

PETITIONS AND MEMORIALS

Mr. CAPPER presented a petition of sundry citizens of Kansas City, Kans. and Mo., praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

Mr. BRATTON presented a petition of sundry citizens of Elida and vicinity, in Roosevelt County, N. Mex., praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

Mr. RANDELL presented petitions of sundry citizens of New Orleans and Oil City, La., praying for the passage of legislation granting increased pensions to Spanish War veterans, which were ordered to lie on the table.

Mr. NORBECK presented a petition of sundry citizens of Tripp County, S. Dak., praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

Mr. GREENE presented a resolution adopted by the Board of Aldermen of the City of Rutland, Vt., favoring the passage of legislation dedicating October 11 of each year as General Pulaski's memorial day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski, Revolutionary War hero, which was referred to the Committee on the Library.

Mr. BLAINE presented a resolution adopted by the convention of the Southern Wisconsin Teachers' Association, favoring the passage of legislation for the promotion of vocational rehabilitation, which was referred to the Committee on Education and Labor.

He also presented a resolution adopted by the Common Council of the City of Wauwatosa, Wis., favoring the passage of legislation dedicating October 11 of each year as General Pulaski's memorial day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski, Revolutionary War hero, which was referred to the Committee on the Library.

He also presented a petition of sundry citizens of Cuba City, Wis., praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

He also presented resolutions adopted by La Crosse Aerie, No. 1254, of La Crosse, and Merrill Aerie, No. 584, of Merrill, both of the Fraternal Order of Eagles, in the State of Wisconsin, favoring the passage of legislation for the promotion of an old-age pension system, which were referred to the Committee on Pensions.

NAVAL LIMITATION

Mr. HALE. Mr. President, I present a telegram in the nature of a petition from the State of Maine Emergency Committee on the London Naval Conference. I ask that the telegram be printed in the RECORD and referred to the Committee on Foreign Relations.

There being no objection, the telegram was referred to the Committee on Foreign Relations and ordered to be printed in the RECORD, as follows:

PORTLAND, ME., March 21, 1930.

HON. FREDERICK HALE,

Senate Office Building, Washington, D. C.:

Following message has been sent President Hoover and American delegation London: "Mr. President and members of the United States delegation to the London Naval Conference, we the undersigned strongly urge that negotiations at the London conference be conducted in full remembrance of the renunciation of war as pledged in the pact of Paris. We heartily indorse the policy of naval reduction as announced by the President in his Armistice Day address. Nothing short of substantial reduction will fulfill our expectations. Signed by more than 2,000 citizens of the State of Maine, Congressmen, State legislators, judges, college presidents and professors and other educators, clergymen, editors, lawyers, physicians, bankers, manufacturers, writers, merchants, city